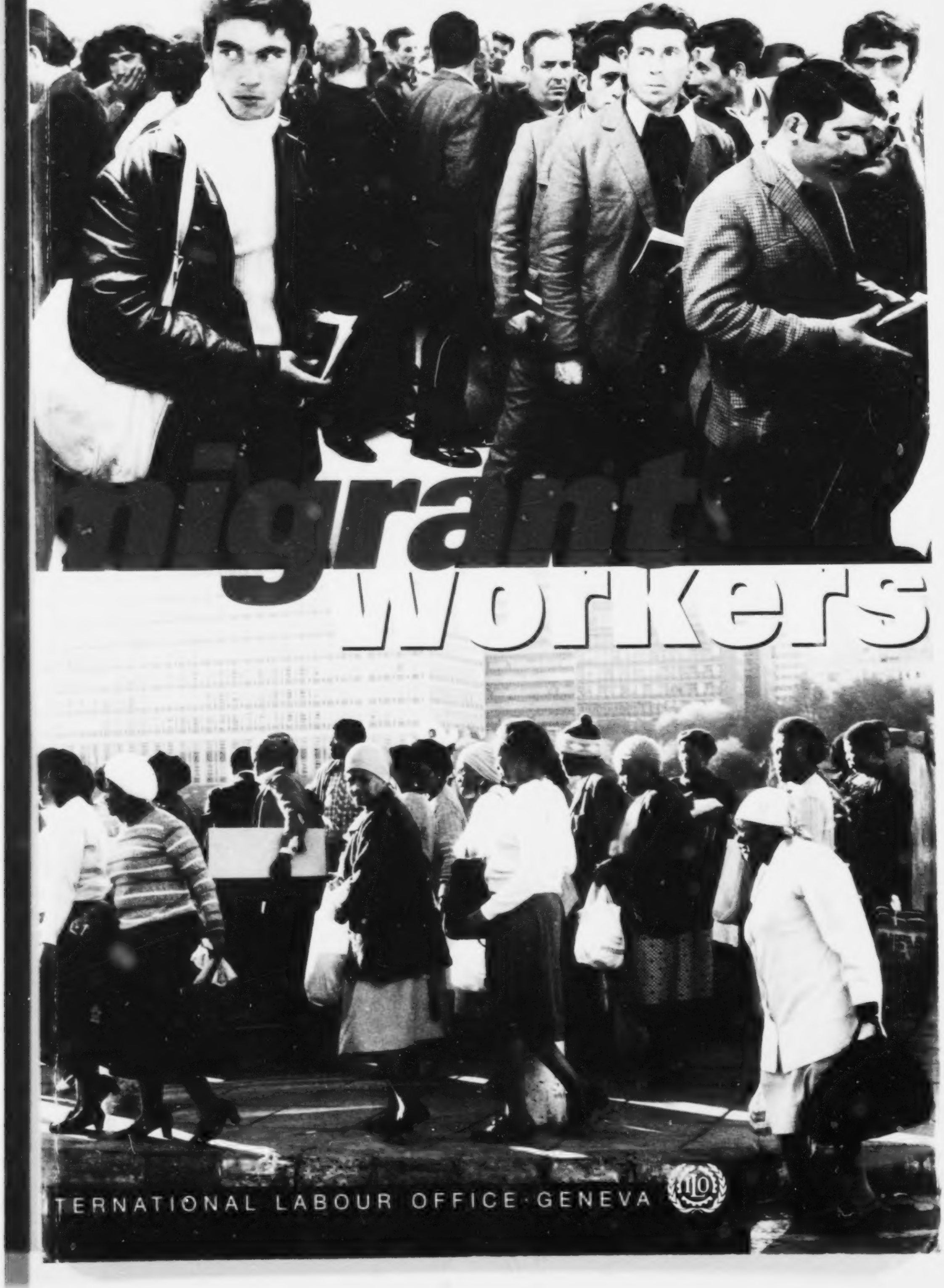
INTERNATIONAL LABOUR CONFERENCE, 87th Session, 1999



migrant workers

TERNATIONAL LABOUR OFFICE GENEVA

MIGRANT WORKERS

International Labour Conference
87th Session 1999

Report III (Part 1B)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

General Survey on the reports on the Migration for Employment Convention (Revised) (No. 97), and Recommendation (Revised) (No. 86), 1949, and the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151), 1975

Report of the Committee of Experts on the Application of Conventions
and Recommendations (articles 19, 22 and 35 of the Constitution)

migrant workers

INTERNATIONAL LABOUR OFFICE · GENEVA

ISBN 92-2-110808-2
ISSN 0074-6681

First published 1999

The publication of information concerning action taken in respect of international labour Conventions and Recommendations does not imply any expression of view by the International Labour Office on the legal status of the State having communicated such information (including the communication of a ratification or declaration), or on its authority over the areas or territories in respect of which such information is communicated; in certain cases this may present problems on which the ILO is not competent to express an opinion.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. A catalogue or list of new publications will be sent free of charge from the above address.

Printed in Switzerland ATA

SUMMARY

Paragraphs

Introduction 1-31

Chapter 1. Review of standards and activities relating to the protection of migrant workers 32-82

Chapter 2. Scope of the instruments 83-130

Chapter 3. The migration process 131-288

Chapter 4. Migrant workers who are in an irregular situation and/or illegally employed 289-364

Chapter 5. Equality of opportunity and treatment 365-452

Chapter 6. Migrants in society 453-558

Chapter 7. Employment, residence and return 559-620

Final remarks 621-669

Appendices

CONTENTS

Paragraphs

Introduction 1-31

Section I. Mandate of the Committee of Experts on the Application of Conventions and Recommendations 1-3

Section II. Contemporary trends in international migration 4-24

A. Extent of international migration 5-7

B. Direction of international migration 8-12

C. Nature of international migration 13-17

D. Irregular migration 18-19

E. Female migrants 20-23

F. Fundamental human rights and state sovereignty 24

Section III. Status of ratifications, available information and arrangement of the survey 25-31

A. Status of ratifications 25

B. Available information 26-29

1. Convention No. 97 26

2. Convention No. 143 27-28

3. Nature and extent of the information received 29

C. Arrangement of the survey 30-31

Chapter 1. Review of standards and activities relating to the protection of migrant workers 32-82

Section I. ILO activities relating to the protection of migrant workers 32-48

A. Standard-setting activities of the ILO 32-38

1. Specific standards relating to migrant workers 33-36

2. Other relevant ILO standards 37-38

B. Other ILO activities in the field of migration 39-48

1. Recent ILO activities 40-43

2. Technical cooperation and technical advisory services 44-45

3. Other projects 46-48

Section II. Other standards and activities in the field of migration 49-82

A. United Nations instruments and activities 49-61

1. Relevant United Nations instruments 50-53

2. United Nations activities in the field of migration 54-60

3. United Nations specialized agencies 61

B. Regional instruments and intergovernmental activities 62-75

1. Regional migration instruments 63-70

2. Intergovernmental activities 71-75

Paragraphs

C. Bilateral agreements 76-77
D. Employers' and workers' organizations and non-occupational NGOs 78-82

Chapter 2. Scope of the instruments 83-130
Section I. Summary of the instruments 84-100
A. Contents of the 1949 instruments 84-93
1. Migration for Employment Convention (Revised), 1949 (No. 97) 84-92
2. Recommendation No. 86 93
B. Contents of the 1975 instruments 94-100
1. Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) 94-99
2. Recommendation No. 151 100
Section II. Persons covered by the instruments 101-117
A. Definition of the term "migrant worker" 101-108
1. Employment 101
2. Families of migrant workers 102-103
3. International migration 104
4. Clandestine migration and illegal employment 105-106
5. Length of stay 107-108
B. Reciprocity 109
C. Exceptions 110-115
D. Spontaneous and organized migration 116-117
Section III. Scope of measures to be taken 118-125
A. Flexibility of the instruments 118-120
B. Hierarchy of legal provisions relating to migrant workers 121-125
Section IV. Sending and receiving countries 126-129
Conclusions 130

Chapter 3. The migration process 131-288
Section I. Recruitment 132-189
A. Definitions 133-139
B. Documents issued to migrants 140-160
1. The contract 141-154
2. Other documents 155-157
3. Supervision and sanctions 158-160
C. Recruitment machinery 161-189
1. Official recruitment bodies 164-170
2. Private recruitment and placement bodies 171-187
3. Direct recruitment by the employer 188-189
Section II. Prior to departure 190-237
A. Migration information and assistance services 191-213
1. Organization of information services 201-205
2. Free services 206
3. Cooperation between information services of migrant-sending and migrant-receiving countries 207-213

Paragraphs

B. Measures to combat misleading propaganda 214-225
C. Health inspection at the time of departure 226-232
D. Other measures to facilitate departure of migrants 233-237
Section III. During the journey 238-252
A. Health care during the journey 242-243
B. Cooperation among sending, receiving and transit States 244-247
C. Costs of the journey 248
D. Exemption from customs duties 249-250
E. Reasons for lack of information 251-252
Section IV. Upon arrival 253-287
A. Medical services and hygienic conditions upon arrival 256-266
B. Information provision on arrival 267-276
1. Information and assistance services 268-273
2. Organization of the service 274-275
3. Free service 276
C. Accommodation, clothing and food 277-282
D. Other reception facilities 283-287
1. Administrative formalities 283
2. Interpretation services 284
3. Other assistance 285-287
Conclusions 288

Chapter 4. Migrant workers who are in an irregular situation and/or illegally employed 289-364
Section I. Minimum standards of protection 295-315
A. Basic human rights 296-301
B. Rights arising out of past employment 302-309
1. Remuneration 305
2. Social security and other benefits 306-309
C. Cost of expulsion 310-311
D. Regularization of the situation 312-315
Section II. Migration in abusive conditions 316-345
A. Definitions 318-319
1. Forms of migration addressed 318
2. Abusive conditions 319
B. Detection and elimination of migration in abusive conditions 320-345
1. General measures 322-329
2. Collaboration between States 330-334
3. Sanctions 335-342
4. Consultation of employers' and workers' organizations 343-345

Paragraphs

Section III. Illegal employment 346-359
A. Definitions 346-347
B. Detection and suppression of illegal employment 348-359
1. General measures 348-353
2. Sanctions 354-359
Conclusions 360-364

Chapter 5. Equality of opportunity and treatment 365-452
Section I. Scope of the principles set forth in the instruments of 1949 and 1975 369-380
A. The 1949 instruments 370-373
B. The 1975 instruments 374-380
Section II. Subjects covered by the instruments 381-449
I. Employment and occupation 381-429
A. Repeal or abolition of discriminatory legislative or administrative measures 382-405
B. Elimination of discrimination in practice and promotion of equality of opportunity 406-429
II. Social security 430-435
A. Convention No. 97 431
B. Convention No. 143 432-435
III. Trade union rights 436-441
A. Affiliation 437-438
B. Eligibility 439-440
C. Exercise of trade union rights 441
IV. Cultural rights 442-443
V. Individual and collective freedoms 444
VI. General conditions of life 445-449
A. Housing 445-446
B. Legal proceedings 447
C. Other fields 448-449
Conclusions 450-452

Chapter 6. Migrants in society 453-558
Section I. Social policy formulation 454-468
A. Social policy 455-466
1. Formulation and implementation of social policy 461-462
2. Recent policy changes 463
3. Consultation with employers' and workers' organizations 464-466
B. Difficulties in application 467-468
Section II. Migration and the family 469-500
A. Family reunification 470-487
1. Permanent migrant workers 474-477
2. Temporary migrant workers 478-482
3. Scope of family reunification 483-487

Paragraphs

- B. Conditions for family reunification . . . 488-495
  - 1. Accommodation . . . 488-491
  - 2. Subsistence . . . 492-494
  - 3. Other conditions . . . 495
- C. Visits to country of origin . . . 496-499
- D. Consultation with employers' and workers' organizations . . . 500

Section III. Safety and health at the workplace . . . 501-512

- A. Special health and safety risks . . . 502-506
- B. Security and health care . . . 507-512
  - 1. Measures to acquaint migrants with occupational safety and health regulations . . . 507-510
  - 2. Access to health care . . . 511-512

Section IV. Social services . . . 513-524

- A. Functions of the social services . . . 513-518
  - 1. Activities to assist migrant workers . . . 514-516
  - 2. Activities to assist authorities and other bodies which deal with migrant workers . . . 517-518
- B. Organization of social services . . . 519-521
- C. Cooperation and coordination between social services . . . 522
- D. Consultation with employers' and workers' associations . . . 523-524

Section V. Education . . . 525-536

- A. Access to schooling . . . 525-530
- B. Recognition of qualifications obtained abroad . . . 531-536

Section VI. Cultural aspects of social policy . . . 537-557

- A. Language training . . . 537-544
- B. Awareness-raising programmes . . . 545-548
- C. Preservation of migrants' cultural identity . . . 549-556
  - 1. Preservation of national and ethnic identity . . . 551-555
  - 2. Mother-tongue teaching . . . 556
- D. Recreational and welfare facilities . . . 557

Conclusions . . . 558

Chapter 7. Employment, residence and return . . . 559-620

Section I. Employment . . . 561-575

- A. Benefits and compensation . . . 561-571
  - 1. Employment injury benefits . . . 562
  - 2. Holiday entitlement . . . 563
  - 3. Reimbursement of social security contributions . . . 564-565
  - 4. Liquidation and transfer of property of migrants . . . 566
  - 5. Remittances . . . 567-571
- B. Alternative employment . . . 572-573
- C. Appeal against loss of employment . . . 574-575

Paragraphs

Section II. Residence 576-608
  A. Non-return in the case of loss of employment 577-590
    1. Migrants with permanent residence status 583
    2. Time-bound migrant workers 584-585
    3. Conditions for renewal of residency and/or work permits 586-587
    4. Burden on public funds 588-589
    5. Other comments from governments on non-return in case of loss of employment 590
  B. Alternative employment, retraining and relief work in case of loss of employment 591-597
  C. Refugees and displaced persons 598-599
  D. Continued residence in case of incapacity for work 600-608
Section III. Return 609-619
  A. Exemption from customs duties 610-611
  B. Costs of return 612-613
  C. Redress in case of issuance of an expulsion order 614-617
  D. Employment and benefits upon return to the home country 618-619
Conclusions 620

Final remarks 621-669
Section I. Ratification prospects, obstacles to ratification and legal difficulties in the application of the instruments 621-643
  A. State of ratifications and ratification prospects 621-628
    1. Cases in which ratification is envisaged or being considered 623-626
    2. Cases in which ratification is not envisaged or not on the agenda 627-628
  B. Obstacles to ratification 629-640
    1. Issues relating to both Conventions Nos. 97 and 143 629-637
    2. Issues relating to Convention No. 97 638
    3. Issues relating to Convention No. 143 639-640
  C. Legal difficulties in the application of the instruments 641-643
Section II. Conclusions 644-662
  A. International labour Conventions and national legislation on migrant workers: Convergence and divergence 644-654
    1. Recruitment procedures 648-649
    2. Rights afforded to migrant workers in an irregular situation 650
    3. Ensuring equality of opportunity and treatment 651-652
    4. Control of migration 653
    5. Sanctions 654
  B. What standards for migration? 655-662
    1. Declining role of state leadership in the world of work 657
    2. Feminization of migration for employment 658
    3. Increase in temporary migration in place of migration for permanent settlement 659
    4. Increase in illegal migration 660-661
    5. Growth of certain means of transport 662
Conclusions 663-669

Pages

Appendices

A. Texts of the instruments of 1949 249

Migration for Employment Convention (Revised), 1949 (No. 97) 249

Annex I. Recruitment, placing and conditions of labour of migrants for employment recruited otherwise than under government-sponsored arrangements for group transfer 255

Annex II. Recruitment, placing and conditions of labour of migrants for employment recruited under government-sponsored arrangements for group transfer 258

Annex III. Importation of the personal effects, tools and equipment of migrants for employment 261

Migration for Employment Recommendation (Revised), 1949 (No. 86) 262

Annex. Model agreement on temporary and permanent migration for employment, including migration of refugees and displaced persons 267

B. Texts of the instruments of 1975 278

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) 278

Migrant Workers Recommendation, 1975 (No. 151) 285

C. Ratifications of Conventions Nos. 97 and 143 292

Migration for Employment Convention (Revised), 1949 (No. 97) 292

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) 293

D. Table of reports due and received on the Migration for Employment Convention (Revised) (No. 97) and Recommendation (Revised) (No. 86), 1949, and on the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Migrant Workers Recommendation (No. 151), 1975 (article 19 of the Constitution) 294

E. List of legislation relating to migrant workers by country 301

Table

1. Estimate of the number of non-nationals by major region in 1995, excluding asylum-seekers and refugees 3

Figures

1. Number of major migrant-sending and migrant-receiving countries, 1970 and 1990 4
2. Cumulative total of member States having ratified the Conventions 12
3. Annual number of member States having ratified the Conventions 13

Boxes

1. Migrant workers 6

1.1. Labour market discrimination against migrants and ethnic minorities 23

3.1. EURES 63

3.2. Self-regulation by private agents 73

3.3. Guidelines on special protective measures for migrants in time-bound activities 99

Pages

4.1. Labour trafficking 104
4.2. International migration and development 116
4.3. Abusive practices in the field of migration 119
5.1. Why is discrimination a problem? 143
5.2. Positive action measures 162

INTRODUCTION

Section I. Mandate of the Committee of Experts on the Application of Conventions and Recommendations

1. In accordance with article 19 of the Constitution of the International Labour Organization, the Governing Body of the International Labour Office, at its 267th Session (November 1996) invited governments which have not ratified the Migration for Employment Convention (Revised), 1949 (No. 97), and/or the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), to submit reports on the state of law and practice regarding these matters. It also invited the governments of all member States of the Organization to supply reports on the two Recommendations supplementing these instruments, that is, the Migration for Employment Recommendation (Revised), 1949 (No. 86), and the Migrant Workers Recommendation, 1975 (No. 151).[1] These reports, in addition to those submitted in accordance with articles 22 and 35[2] of the ILO Constitution by States which have ratified these Conventions, have enabled the Committee of Experts on the Application of Conventions and Recommendations, in accordance with its usual practice, to prepare a General Survey on the effect given to these instruments both in the States which have ratified one or both of these Conventions and in those which have not. This is the second General Survey carried out by the Committee since the adoption of the instruments; the first dates back to 1980.[3]

2. It should be pointed out that, following the discussions on standard-setting policy at the International Labour Conference in 1994 on the occasion of the 75th anniversary of the ILO, the Governing Body of the International Labour Office approved at its 262nd Session (March-April 1995) the establishment of a *Working Party on Policy regarding the Revision of Standards* within its Committee on Legal Issues and International Labour Standards. The Working

---

[1] See Appendices A and B for the full text of Conventions Nos. 97 and 143 and Recommendations Nos. 86 and 151.

[2] The Committee points out that the information mentioned in these reports is not, with a few exceptions, very recent; partly because reports on these instruments are requested every five years (the last examination took place in 1995) and partly because several reports submitted in 1995 were not detailed.

[3] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4B), International Labour Conference, 66th Session, Geneva, 1980 (referred to below as the 1980 General Survey).

Party's mandate includes assessing current needs for the revision of standards, examining criteria that could be applied to revision of standards and analysing the difficulties and obstacles preventing the ratification of ILO Conventions with a view to proposing measures to improve the ratification of Conventions that have already been revised. Conventions Nos. 97 and 143, which are the subject of this survey, are among the Conventions for which the Governing Body has requested additional information from constituents to enable it to clarify the possible need for revision of these instruments. For a number of these Conventions, notably Conventions Nos. 97 and 143, the Governing Body decided to "*invite member States to provide reports under article 19 of the Constitution and to request the Committee of Experts to undertake a general survey of the reports [...] and [...] then re-examine the possibility of including the question of migrant workers on the agenda of a forthcoming session of the Conference for a general discussion, and also in order to clarify the possible need for revision of Conventions Nos. 97 and 143 [...] and that the Working Party (or the LILS Committee) re-examine the status of Conventions Nos. 97 and 143 in due course*".[4]

3. The Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration (Geneva, 21-25 April 1997) also proposed in its report that the International Labour Conference carry out a general discussion on the employment of migrants, including questions of fundamental workers' rights. This suggestion was recalled in the proposals for the agenda of the 88th Session (2000) of the International Labour Conference but was not retained by the Governing Body.

Section II. Contemporary trends in international migration

4. Since the four instruments which form the basis of this study were adopted, in 1949 and 1975, the extent, direction and nature of international labour migration has undergone significant changes.

A. Extent of international migration

5. International labour migration is currently a global phenomenon and few countries remain completely unaffected by it. However, it is difficult to establish with accuracy the number of migrant workers in the world today. In many countries, particularly countries in the course of transition, incomplete or non-existent data impede the drawing of an accurate global picture of migratory patterns. Even where such data exist, the definitions of such key terms as "economic migrant", "permanent migrant", and "irregular migrant" are by no means universally accepted, and the systems by which the data were collected often differ widely, reducing the comparability of statistics. Finally, data on irregular migration and illegal employment is sparse in even the most sophisticated of data collection systems.[5]

---

[4] GB.267/LILS/4/2, para. 62; see also GB.267/9/2, para. 14 and GB.267/PV, p. IV/6.

6. It is clear, however, that international labour migration has grown considerably in the years since the adoption of the four instruments under consideration. The ILO recently estimated that over 90 million people (migrant workers and their families) are currently residing, legally or illegally, in a country other than their own. Table 1 below breaks down this figure by region.

Table 1. Estimate of the number of non-nationals by major region in 1995, excluding asylum-seekers and refugees (in millions)*[6]

Region	Economically active	Dependants	Total
Africa	6-7	12-14	18-21
North America	8	8-10	16-18
Central and South America	3-5	4-7	7-12
South, South-East & East Asia	2-3	3-4	5-7
West Asia (Arab States)	6	2-3	8-9
Europe**	11-13	15-17	26-30
Overall totals	36-42	44-55	80-97

* The estimate refers to foreign passport-holders, not to foreign-born persons because the latter include an unknown proportion of naturalized persons who no longer hold the nationality of their country of origin. The figures given here include both regular migrants and migrants whose status may be irregular as regards entry, stay or economic activity. ** The numbers for Western Europe would be about 9 million economically active foreigners along with 13 million dependants.

Source: ILO estimates.

7. Not only has the total number of individuals involved in the migration process risen, the number of countries from which they are emanating and to which they are heading, has also grown. In 1970, 64 countries were major senders or receivers of migrant labour and by 1990 this figure had increased to over 100, taking into account the dissolution of the former *Soviet Union* and

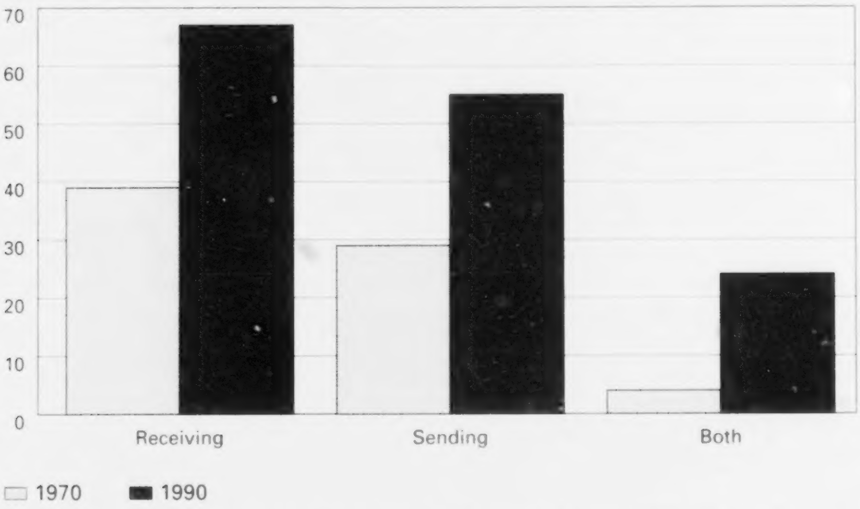
---

[5] For an overview of data collection systems on migration worldwide and the problems hindering international estimates, see R.E. Bilsborrow, G. Hugo, A.S. Oberai, H. Zlotnik: *International migration statistics: Guidelines for improving data collection systems* (Geneva, ILO, 1997).

[6] See *Protecting the most vulnerable of today's workers*, Discussion Paper submitted to the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, MEIM/1997 (Geneva, ILO, 1997), para. 7.

Yugoslavia.[7] *Italy, Japan, Malaysia* and *Venezuela* are among the new major receiving countries, and *Bangladesh, Egypt* and *Indonesia* are among the new major senders.[8] Figure 1 below provides an illustration of the number of countries which are affected by international migration as sending countries, receiving countries, or, in many cases, both.

Figure 1 **Number of major* migrant-sending and migrant-receiving countries, 1970 and 1990**



* "Major" is defined here as including only countries which (a) had a population of more than 150,000 in 1970 and 200,000 in 1990, and (b) whose labour market or GNP was affected to an extent of at least 1% by international labour migrants, disregarding asylum seekers or refugees. The successor States of the ex-socialist Federal Republic of Yugoslavia are not included.

Source: ILO estimates. The 1990 data on which this comparison is based were published in Stalker, P.: *The work of strangers. A survey of international labour migration* (Geneva, ILO, 1994), pp. 275-282, as well as in ILO, IOM and UNHCR: *Migrants, refugees and international cooperation: A joint contribution to the International Conference on Population and Development* (Geneva, ILO, 1994), pp. 21-28.

---

[7] That is, the ex-Socialist Federal Republic of Yugoslavia.

[8] *International migration and migrant workers*, GB.265/ESP/2 (Geneva, ILO, 1996), para. 3.

B. Direction of international migration

8. The diversification of the countries which are affected by international labour migration has entailed the development of regional migration patterns with disparate causes and consequences. A few examples of the most pertinent regional developments may serve to illustrate the extent to which the direction of migration has changed in recent years.

9. The first example is the economic and political transformation of the countries of Central and Eastern Europe, coupled with ethnic and social tensions throughout the region, with the effect that countries which previously were merely affected by migration as transitory countries[9] have been transformed into migrant-receiving countries in their own right. As a result, many of these countries find themselves confronting vast immigration, but with little or no legislation or infrastructure to cope with the subsequent social and economic consequences. To take a concrete example, the Government of *Azerbaijan* reported that the number of non-nationals (including asylum seekers and displaced persons) who have entered the country in recent years is approaching 1 million, and that it has had to develop measures rapidly to deal with this new phenomenon. Many other countries of the region indicated similar concerns in their reports, on occasion requesting the Office's technical assistance in developing appropriate means to deal with them.

10. A second development which has transformed the face of international migration is the increasing tendency in many traditionally migrant-receiving countries to develop preferential immigration policies as a consequence of the rise in domestic unemployment rates. Such policies tend to favour migration from within a regional grouping, or from countries with which the region has particular ties, while simultaneously making it more difficult for nationals of other countries to migrate to the region. A number of countries have reported to the Committee that, with a view to joining a regional organization, they are currently in the process of harmonizing their immigration policy with countries which are already members.

11. A third development of most recent import is the 1997-98 Asian financial crisis. The crisis and policy measures initiated in response to it have affected the economies of the region with varying severity and the consequences for migrant workers of this region have been severe and are likely to deteriorate further. According to an ILO technical report "The social impact of the Asian financial crisis"[10] which was discussed at the High-Level Tripartite Meeting on Social Responses to the Financial Crisis in East and South-East Asian Countries

---

[9] Under art. 6 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted by the United Nations in 1990, the term "State of transit" is defined as "any State through which the person concerned passes on any journey to the State of employment or from the State of employment to the State of origin or the State of habitual residence".

[10] AFC/Bangkok/1998, ILO Regional Department for Asia and the Pacific.

(Bangkok, 22-24 April 1998) the impact of the crisis on labour migration is expected to have several dimensions: (a) reduced net immigration because of the slowing down of their economies and immigration restraints imposed by their governments; (b) new admissions will be cut down and what will happen to the number returning is far from certain: there is no certainty that those laid off will simply pack up and go home; and (c) with declining employment opportunities at home and increasing inter-country wage differentials there could be a build-up of emigration pressures in one or more of the worst-affected countries. It is already being anticipated that trafficking in clandestine labour migrants will rise as a consequence, and will entail heavy private and social costs, both in the countries of origin and those of destination.[11]

Box 1
Migrant workers

The [Asian] crisis has made abundantly clear the need for recasting approaches to managing international labour migration, which were characterized by unclear policy goals, slack implementation and an absence of bilateral regulation. Good governance is of the utmost importance in this field because the cross-border movements of workers and dependants touch upon the innermost feelings of people; and they involve human beings, most of whom are poor, rather than commodities.

At the national level, therefore, there is an urgent need for reviewing policies, procedures and measures on how to admit and treat foreigners who are needed and to prevent the entry, stay or employment of those who are not needed. It could perhaps start with tripartite consultative meetings at the sectoral level — agricultural, construction, manufacturing and private services — before matters are discussed, as well as decided upon, in a tripartite framework at the national level. It might conceivably include the issues of graft and corruption at the local police level, on the one hand, and of the establishment of funds, based on contributions, to compensate migrant workers for wages not paid in the event of insolvency and bankruptcy, on the other. Comparative experience on good governance in this field can be shared.

At the international level, there is an urgent need for establishing bilateral or multilateral mechanisms to transcend the inherent limitations imposed by national boundaries on the impact of state interventions in this sphere of social policy. Bilateral or broader consultations, of a formal or informal nature, can assist countries in the conceptualization and implementation of agreed regulations to channel workers into jobs where they are authorized to be employed. These can include: the setting up, at bilateral levels, of joint commissions of labour which could serve as informal and flexible structures for regular consultations between authorities of sending and receiving countries; bilateral labour agreements covering key procedural and other issues, including human resource development, social security and minimum wages; and round-table discussions, at regional or subregional levels, to tackle common problems and solutions.

Source: Excerpt from ILO technical report for discussion at the High-Level Tripartite Meeting on Social Responses to the Financial Crisis in East and South-East Asian Countries, Bangkok, 22-24 April 1998.

---

[11] See paras. 289-293 below.

12. Globalization has had a profound effect upon international labour migration. The growing interdependency of countries, facilitated by technological developments, means that cross-border transactions in goods, services and capital occur much more frequently, and with less disruption than previously. Coupled with the growth of communication networks and developments in international transport, globalization has had the effect that vastly increased numbers of people have begun, and will undoubtedly continue, to view international migration as a means of escaping poverty, unemployment and other social, economic and political pressures in the home country.[12]

C. Nature of international migration

13. Regional and global developments in migration have resulted in significant changes in the nature of international migration. Whereas at the time of the adoption of the 1949 instruments permanent migration for the purposes of settlement[13] and temporary migration[14] in order to fill vacancies in the domestic market were clearly demarcated, the oil crisis which hit the major European receiving countries in the early 1970s blurred this previously clear distinction. As borders were tightened and a "freeze" was placed on immigration as a result of the crisis, these same countries found that many migrants who had been recruited for temporary employment in fact settled in the host country, and took the opportunity to reunite their families there. This transformation from temporary to permanent residence[15] brought with it a host of social problems which have had to be addressed, in particular as second and even third generations of non-nationals were born into the country.

14. As the ban on immigration for permanent settlement has, with few exceptions, remained in force for many major migrant-receiving countries, time-bound migration, in various forms,[16] has become the only means of

[12] For a recent overview of the link between international migration and globalization, see G. Battistella: "Migration in the context of globalization: Issues and implications", in *Asian Migrant*, Vol. 11, No. 1, Sep. 1998.

[13] "Migration for permanent settlement" occurs when, according to Art. 8 of Convention No. 97, a migrant for employment is admitted on a permanent basis upon arrival in the country of immigration.

[14] Truly temporary migration policies as understood here relate to employment or economic activities whose duration is (a) anticipated to last an approximate number of days, weeks or months or (b) known to be definite and coming to an end even though that end may not always be known with exactitude in advance or may be subject to short-term business requirements or other exogenous factors. Recurrence of the employment opportunity or activity year after year or in different locations is not a criterion of exclusion.

[15] In several migrant-receiving countries temporary migrant workers can acquire the status of permanent resident after a certain period of residence, which varies in length from one country to another. See paras. 391-392 below.

[16] For a detailed description of different forms of temporary migration see *Protecting the most vulnerable of today's workers*, op. cit., paras. 20-100.

migrating for many people. Many States reported to the Committee that some provisions of the four instruments under consideration are no longer of relevance to the national situation, as permanent migration no longer exists.[17] The few countries, such as *Australia, Canada* and *New Zealand*, which continue to accept migrants for permanent settlement have also changed their immigration policies, and temporary migration has become increasingly favoured in these countries as well. For example, in *Canada*, the number of temporary worker visas quadrupled between 1981 and 1990 and the average annual inflow of temporary workers exceeded the number of permanent immigrants entering under employment schemes by two and a half during this period.[18] Finally, many of the new migrant-receiving countries of the Pacific Rim and Central and Eastern Europe also appear to be adopting policies favouring temporary or project-tied migration as opposed to issuing permanent residence permits, and time-bound migration schemes have been set up in several of these countries.

15. The profile of temporary migrants has also changed. While major temporary migration flows in the past consisted of semi-skilled workers emigrating to take up jobs which nationals would not undertake, contemporary immigration policies tend to focus upon highly skilled migrants. The recent adoption by *New Zealand* of the so-called "points system" of immigration, by which only highly qualified and economically desirable migrants are recruited, illustrates the degree of selectivity which migrant-receiving countries can now afford to exercise over migration flows.[19] The exception to this rule continues, however, to be seasonal workers, primarily recruited for agricultural work in almost all regions of the world. These migrant workers, as will be seen in the course of this survey, are often among the most vulnerable, often working in conditions vastly inferior to national workers, in many cases with little reward.

16. Another aspect to be taken into consideration is the flexibility which characterizes today's labour market and which affects all workers, including migrant workers. Temporary migrant workers who, by definition, occupy precarious positions, frequently change from one job to another and from one category to another, for example: self-employment, contract work and salaried work, etc. This makes it all the more difficult to categorize workers exclusively by the nature of their employment alone.

17. The nature of recruitment practices has also been dramatically transformed in the years since the adoption of the four ILO instruments under consideration. The decline in government-sponsored schemes for group migration, as well as a general decline in the role of state leadership in the world of work, left a vacuum which was rapidly and efficiently filled by private agencies recruiting workers for employment abroad. For example, in relation to migration for employment between Asian countries and the Gulf States, it has been suggested by the ILO that as much as 80 per cent of all foreign job placements have been handled by private recruitment agents.[20] Many countries in Asia and in the transition countries of Central and Eastern Europe, in particular, have seen a proliferation of private recruitment agents.

---

[17] For example, the *Netherlands* stated that "there is no longer any large-scale [permanent] migration of workers to the *Netherlands*. The provisions relating to recruitment and assistance of migrant workers have therefore lost practical significance".

[18] *Protecting the most vulnerable of migrant workers*, op. cit., para. 10.

[19] Under the "points system", which was adopted by *New Zealand* in the early 1990s, prospective migrants are awarded points for such factors as academic qualifications, work experience, age and language ability, etc. Those failing to achieve a specified minimum number of points are not permitted to apply for permanent settlement. *Australia* and *Canada* operate similar systems of immigration.

D. Irregular migration

18. An examination of the current immigration policies of most major migrant-receiving countries may lead one to believe that migration is primarily a time-bound phenomenon affecting only highly qualified foreign workers. However, this is not necessarily reflected in practice as the majority of migrant workers occupy semi-skilled or unskilled positions, often under illegal conditions. Irregular migration in recent years appears to have taken on a new and even more concerning character. It should also be noted that in many countries the illegal employment of migrants is not necessarily a temporary phenomenon and that many migrants may live and work in an irregular situation for several years, and in some cases even permanently. The irregular entry, employment and residence of foreign workers has emerged as a disturbing trend, and one which national governments and the international community have attempted to address. The 1975 instruments were partly designed with the aim of protecting irregular migrants from all kinds of abuse.

19. Estimates of irregular migration are, by the very nature of the phenomenon, imprecise, and wildly disparate figures have been attributed to it. The most commonly cited figure, however, is in the region of 30 million persons worldwide.[21] As will be seen below, individuals who migrate or reside in violation of immigration and employment regulations are highly likely to find themselves in positions where they are vulnerable to abuse and exploitation. Sub-standard working and living environments, slave-like working conditions, confiscation of travel documents, and non-payment of wages and other benefits at the hands of the employer, as well as potential inhumane treatment at the hands of the authorities if caught, all too commonly dominate the lives of irregular foreign workers.

---

[20] See *Protecting the most vulnerable of today's workers*, op. cit., paras. 11 and 102.

[21] P. Stalker: *The work of strangers: A survey of international labour migration* (Geneva, ILO, 1994), p. 146.

E. Female migrants

20. The extent to which women engage in international migration is not generally known. The gender-specific language of the instruments from both 1949 and 1975 (such as the specific reference in Article 6 of Convention No. 97 to "women's work" and Paragraph 15(3) of Recommendation No. 86 where the family of a migrant worker is defined as "his wife and minor children") indicates that the typical migrant was male, and traditional stereotypes view "him" to be young and economically motivated. In this respect, the Committee has endeavoured throughout the English language text of this survey to avoid using gender specific pronouns to refer to those involved in the migration process.

21. Women, if involved in the migration process at all, were perceived to do so by accompanying their spouse in the name of family reunification. While this undoubtedly still accounts for much migration, recent estimates on female migration indicate that women workers are migrating on almost the same scale as men, accounting for almost 48 per cent of migrants worldwide.[22] It appears that there has been a substantial increase in young, unmarried women migrating to find employment for themselves. In countries such as *Indonesia*, women account for as much as 78 per cent of workers migrating through official channels for employment abroad.[23]

22. Often by the very nature of the work which they undertake, women can be particularly vulnerable when employed for work outside their own countries. In recent years the plight of female domestic workers, particularly those employed in the Middle East, has come to public attention. In 1992 the situation in *Kuwait* had become so desperate that around 250 domestic workers had taken refuge in their countries' embassies, many of them alleging that they had been raped, abused or cheated by their employers.[24] The situation of both male and female domestic migrant workers is all the more concerning, as in many countries their employment is not regulated by labour legislation.

23. Another concern is the vulnerability of women recruited for employment outside their countries as "sex workers".[25] While some migrate specifically for this purpose, a vast majority are forced into prostitution upon their arrival in the host country. In many cases, women are recruited for jobs as receptionists, hostesses or barmaids, and are even issued with legitimate permits to undertake such work, yet upon their arrival in the host country find themselves working in the sex industry. Often the confiscation of travel documents, large debts which may be owed to the recruiter, and the threat of being reported to the police render these women, far from their homes and unfamiliar with customs and language in the host country, in an extremely vulnerable position.

---

[22] United Nations: *Measuring the extent of female international migration*, Paper presented at the United Nations Expert Group Meeting on International Migration Policies and the Status of Female Migrants (New York, United Nations, 1990).

[23] Stalker, op. cit., p. 106.

[24] ibid., pp. 109-110.

[25] According to a recent ILO report (Lin Lean Lim (ed.): *The sex sector: The economic and social bases of prostitution in South-East Asia* (Geneva, ILO, 1998)), prostitution and other "sex work" in South-East Asia has grown so rapidly in recent decades that the sex business has assumed the dimensions of a commercial sector, one that contributes substantially to employment and national income in the region. Yet according to the study there is no clear legal stance nor effective public policies or programmes to deal with this phenomenon in any of the countries examined. Governments are constrained not only because of the sensitivity and complexity of the issues involved but also because the circumstances of the "sex workers" can range widely from freely chosen and remunerative employment to debt bondage and slavery.

F. Fundamental human rights and state sovereignty

24. As a result of all the trends outlined above, international migration and its accompanying problems occupy an increasingly significant position on the agendas of international organizations and governments worldwide. Many actors in the migration debate identify a tension developing between the sovereign right of States wishing to protect the interests of their domestic labour market and the fundamental human rights of individuals who, for various reasons, are forced or choose to migrate in search of employment. The ILO has, since its creation in 1919, been at the forefront of this debate and has attempted to create a balance between these apparently conflicting interests through the adoption of international labour standards, technical advisory services and research.

Section III. Status of ratifications, available information and arrangement of the survey

A. Status of ratifications

25. Convention No. 97 came into force on 22 January 1952 and had been ratified by 41 member States as at 11 December 1998; Convention No. 143 came into force on 9 December 1978; as at 11 December 1998 it had been ratified by 18 member States.[26] The following figures show the progression of ratification of these two instruments.

---

[26] The list of States which have ratified these instruments is contained in Appendix C of this survey.

Figure 2 Cumulative total of number of member States having ratified the Conventions

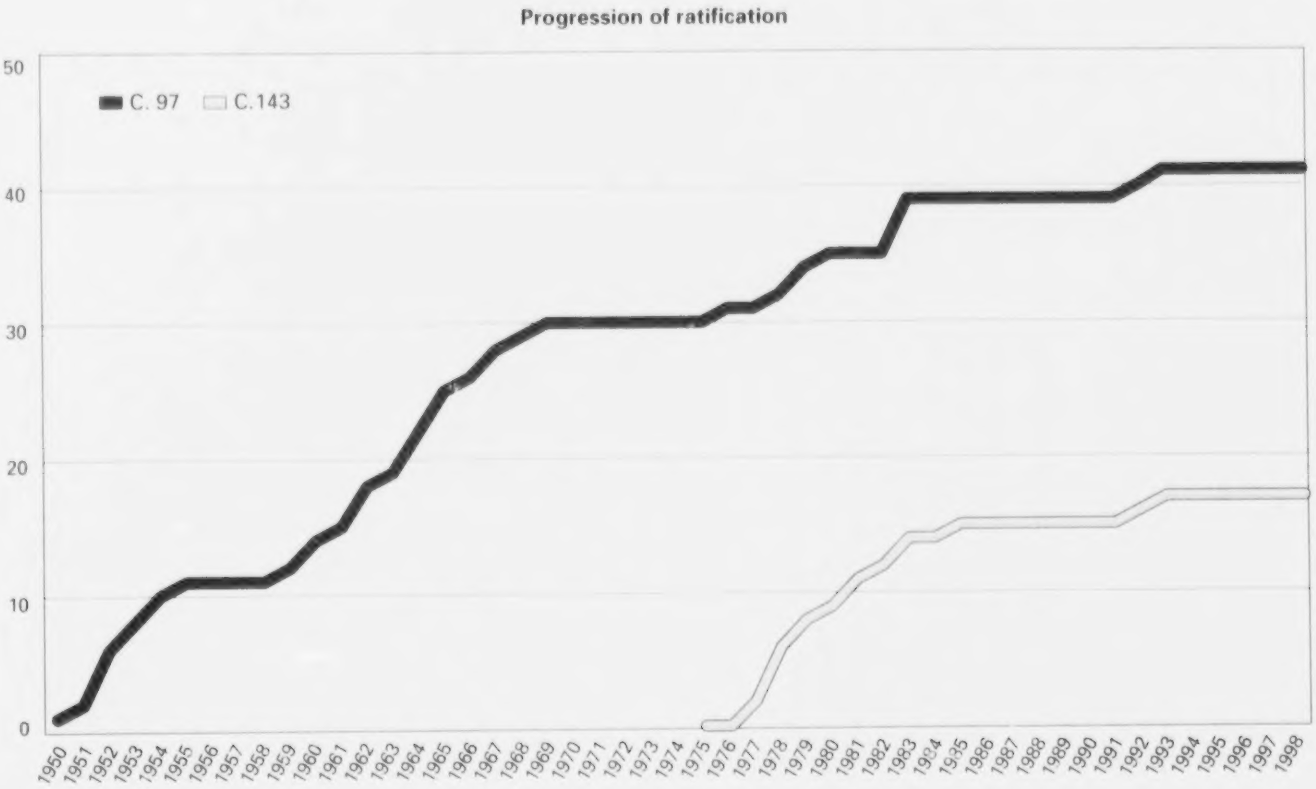
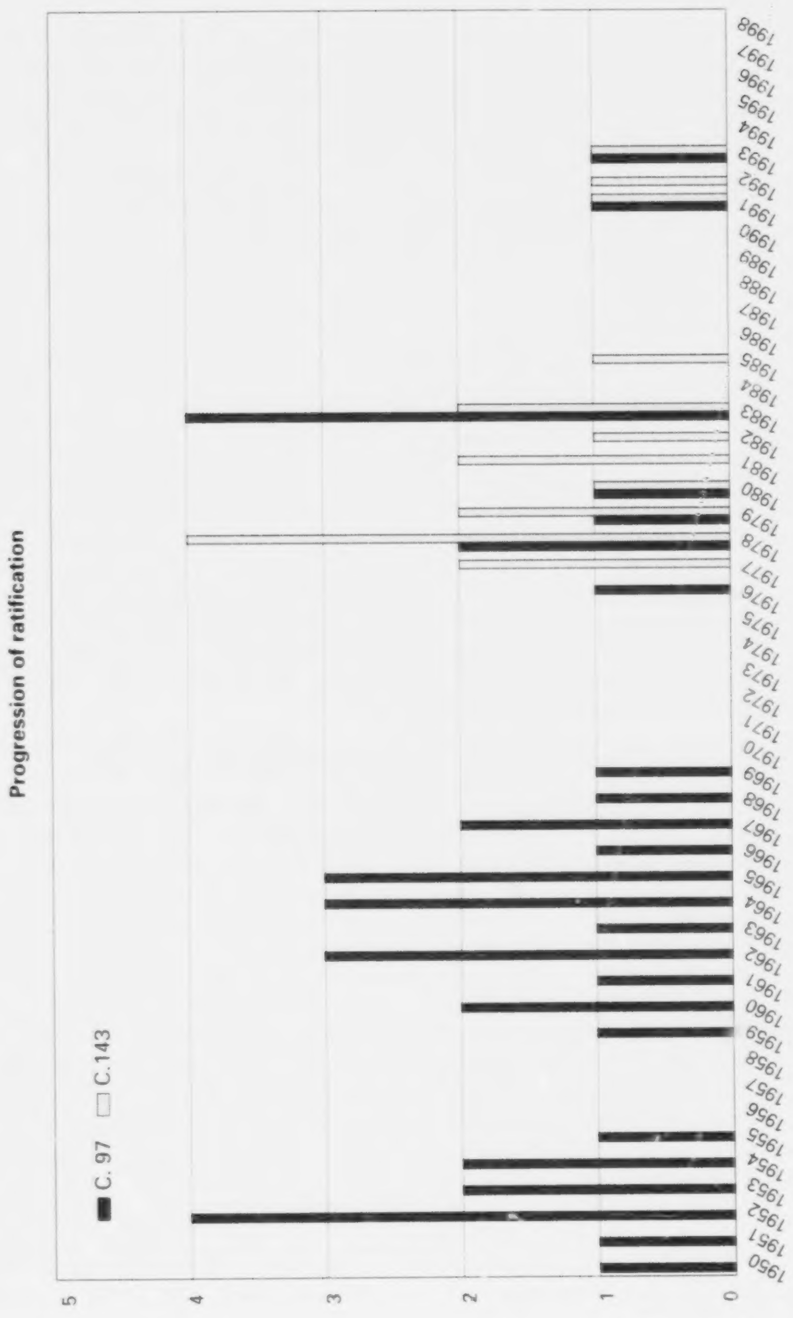


Figure 3 Annual number of member States having ratified the Conventions



B. Available information

1. Convention No. 97

26. For this survey, the Committee used the reports communicated under article 19 of the Constitution of the ILO by 96 States on the position of their law and practice in regard to the matters dealt with in both Convention No. 97 and Recommendation No. 86 (for those which have not ratified the Convention) and in regard to the matters dealt with in only Recommendation No. 86 (for those which have ratified the Convention). The Committee also analysed information communicated by States in their reports under articles 22 and 35 since ratifying the Convention.

2. Convention No. 143

27. For this survey, the Committee used the reports communicated under article 19 of the Constitution of the ILO by 96 States on the position of their law and practice in regard to the matters dealt with in both Convention No. 143 and Recommendation No. 151 (for those which have not ratified the Convention) and in regard to the matters dealt with in only Recommendation No. 151 (for those which have ratified the Convention). The Committee also analysed information communicated by States in their reports under articles 22 and 35 since ratifying the Convention.

28. The Committee takes this opportunity to remind governments which have ratified one or both of these instruments of their obligation to communicate regularly to the Office any legislation adopted on the subject-matter covered by these instruments, including amendments to existing texts, together with information on new practices.

3. Nature and extent of the information received[27]

29. The Committee commends the large number of governments which have communicated reports on these instruments; of the 173 member States concerned, 96 submitted reports and, in addition, ten non-metropolitan territories also communicated reports. The Committee points out, however, that while some of these reports were very complete, many did not contain the information which had been requested, and only provided an approximate image of the application of the instruments, particularly in relation to their application in practice. In accordance with its usual practice, therefore, the Committee also endeavoured to supplement this information, to the extent possible, by taking into account various other official sources, particularly the reports of governments on other international instruments directly or indirectly addressing questions related to the Conventions and Recommendations here examined. The Committee has also taken account of observations from employers' and workers' organizations. In this respect, the Committee regrets the small number of comments which were submitted by the social partners on the concrete application of the different provisions of Conventions Nos. 97 and 143, as well as of Recommendations Nos. 86 and 151 in their countries.[28] Consequently, the Committee calls for greater efforts on the part of governments to communicate the requested information, but also calls upon organizations of employers and workers to take the opportunity offered to them, by article 23 of the Constitution of the ILO, to express their point of view. The Committee stresses this point, as the cooperation of governments and the social partners is essential to allow it to fulfil, in as complete a manner as possible, its mandate and to have a broad view of the situation. Finally, the Committee notes general comments on the situation of migrant workers, submitted by the World Confederation of Labour.

---

[27] For a complete list of the reports received under art. 19 of the Constitution of the ILO, refer to Appendix D.

C. Arrangement of the survey

30. The Committee proposes to present its survey in seven chapters. Chapter 1 reviews the standards and activities relating to the protection of migrant workers. Chapter 2 concerns the scope of the instruments under review. Chapter 3 deals with protective measures in the context of the migration process. Chapter 4 covers protection of migrant workers in an irregular situation. Chapters 5 and 6 analyse the equality of opportunity and treatment and social policy measures that should be provided for migrant workers in a regular situation. In Chapter 7 the Committee examines issues relating to conditions of employment, residence and return of migrant workers. The Committee ends this survey with some concluding remarks.

* * *

31. The references appearing in the footnotes of this survey have been chosen to illustrate the Committee's comments rather than to provide an exhaustive list of national legislation and practice in member States in relation to migrant workers. In this regard, Appendix E contains a list of the principal legislation relating to migrant workers by country.

---

[28] *Argentina:* General Confederation of Labour; *Austria:* Federal Chamber of Labour; *Barbados:* Barbados Employers' Confederation, Barbados Workers' Union; *Belgium:* Confederation of Christian Trade Unions; *Brazil:* National Confederation of Commerce, National Confederation of Transport; *Estonia*: Estonian Confederation of Industry and Employers, Association of Estonian Trade Unions; *Finland:* Confederation of Finnish Industry and Employers, Employers' Confederation of Service Industries, Central Organization of Finnish Trade Unions, Confederation of Salaried Employees, Confederation of Unions for Academic Professions, Commission for Local Authority Employers; *Republic of Korea:* Federation of Korean Trade Unions, Korea Employers' Federation; *Lebanon:* Association of Lebanese Employers; *Mauritius:* Mauritius Employers' Federation, Mauritius Confederation of Workers; *New Zealand:* New Zealand Council of Trade Unions; *Portugal:* Confederation of Trade and Services of Portugal, General Union of Workers; *Sweden:* Swedish Employers' Confederation, Swedish Agency for Government Employees; *Turkey:* Confederation of Turkish Trade Unions, Confederation of Turkish Employers' Associations.

CHAPTER 1

REVIEW OF STANDARDS AND ACTIVITIES RELATING TO THE PROTECTION OF MIGRANT WORKERS

Section I. ILO activities relating to the protection of migrant workers

A. Standard-setting activities of the ILO

32. The protection of workers employed in a country other than their country of origin has always had an important place among the activities of the ILO, since more than any other workers they are liable to exploitation, particularly if they are in an irregular situation and victims of manpower trafficking. It is a telling fact that when the ILO was founded in 1919, the situation of workers employed abroad was addressed both by the Treaty of Versailles[1] and in the Preamble to the Constitution of the ILO.[2] This concern of the ILO with the situation of migrant workers was reflected in the adoption, at the First Session of the International Labour Conference in 1919, of a Recommendation[3] which already sketched out the two aims of the ILO in this domain — equality of treatment between nationals and migrant workers and coordination on migration policies between States, and between governments and employers' and workers' organizations, and in the adoption of several other instruments. It is also to be noted that the Declaration concerning the aims and purposes of the International Labour Organization or the Declaration of Philadelphia (adopted in 1944) singles out the problems of migrant workers for special attention.[4] The Committee notes that this concern remains highly relevant today and observes that the ILO Declaration on Fundamental Principles and

---

[1] Art. 427 of the Treaty of Versailles: "The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein."

[2] The Preamble to the Constitution lays down the obligation for the ILO to improve "protection of the interests of workers when employed in countries other than their own".

[3] The Reciprocity of Treatment Recommendation, 1919 (No. 2).

[4] Para. III(c): "The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve: […]

(c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement."

Rights at Work, adopted by the International Labour Conference on 18 June 1998, in the fourth paragraph of the Preamble, reaffirms the need for the Organization to pay special attention to this category of workers.[5] Finally, the Committee recalls that in the Special Survey of 1996 on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), it recommended examining the possibility of adopting a Protocol supplementing the Convention, consisting of two points: (a) the adoption of supplementary grounds upon which discrimination would be forbidden under the Convention, in order to take account of changes which have taken place, as national legislation has done, and to include grounds which already appear elsewhere in ILO Conventions, and in particular, *nationality*;[6] and (b) the possibility given to countries to reverse the burden of proof, under certain circumstances, in discrimination cases.

1. Specific standards relating to migrant workers

33. As pointed out above, the International Labour Conference had a twofold aim in view when it adopted the instruments on migrant workers. The intention was to regulate the conditions in which the migration process takes place, on the one hand, and, on the other, to provide specific protection for a very vulnerable category of workers. To achieve this, the standard-setting activities of the ILO in this area have been concentrated in two main directions.

34. First, the Conference has endeavoured to establish the right to equality of treatment between nationals and non-nationals in the field of social security and at the same time to institute an international system for the maintenance of acquired rights and rights in the course of acquisition for workers who transfer their residence from one country to another. It has accordingly adopted four Conventions and two Recommendations: the Equality of Treatment (Accident Compensation) Convention (No. 19), and Recommendation (No. 25), 1925; the Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48); the Equality of Treatment (Social Security) Convention, 1962 (No. 118); and the Maintenance of Social Security Rights Convention, 1982 (No. 157), and Recommendation (No. 167), 1983. The main objective of the Conference in adopting these standards has been to limit progressively the scope of certain restrictive clauses based on the method of financing social security, and to mitigate the effects of reciprocity clauses for developing countries.

35. Second, the Conference has endeavoured to find comprehensive solutions to the problems facing migrant workers and has adopted a number of instruments to this end (including those containing only a few provisions relating to migrant workers). In 1926 it adopted the Inspection of Emigrants Convention (No. 21), and the Migration (Protection of Females at Sea) Recommendation (No. 26); in 1939 the Migration for Employment Convention (No. 66), and Recommendation (No. 61), and the Migration for Employment (Co-operation between States) Recommendation (No. 62); and in 1947 the Social Policy (Non-Metropolitan Territories) Convention (No. 82). Convention No. 66 never entered into force due to lack of ratifications; it was accordingly decided to revise it in 1949, when the Migration for Employment Convention (Revised) (No. 97) and Recommendation (Revised) (No. 86) were adopted. In 1955, the Conference adopted the Protection of Migrant Workers (Underdeveloped Countries) Recommendation (No. 100); in 1958, the Plantations Convention (No. 110) and Recommendation (No. 110); and in 1962, the Social Policy (Basic Aims and Standards) Convention (No. 117). Finally, in 1975, the Conference supplemented the 1949 instruments by adopting the Migrant Workers (Supplementary Provisions) Convention (No. 143) and the Migrant Workers Recommendation (No. 151).

---

[5] "Whereas the ILO should give special attention to the problems of persons with special social needs, particularly [...] migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation."

[6] The other grounds of discrimination which the Committee suggested including in a supplementary Protocol were age, civil status, disability, family responsibilities, financial status, language, sexual orientation, state of health and trade union membership.

36. It should be noted that the Working Party on Policy regarding the Revision of Standards has proposed that Conventions Nos. 21 and 48 be denounced and the more recent Conventions be ratified instead (Nos. 97 and 157); other instruments have been shelved with immediate effect (No. 66) pending either their withdrawal by the 88th Session (in the year 2000) of the International Labour Conference[7] or the outcome of consultations with the States parties by the ILO (No. 82). As regards Convention No. 19, the Governing Body has encouraged States to examine the possibility of ratifying the more recent Convention No. 118. It also recommended ratification of Convention No. 110 and decided that there was no need to envisage the revision of Convention No. 117 for the time being.

2. Other relevant ILO standards

37. It should first be recalled that, with the exception of the instruments relating to migrant workers, and other special categories, the Conventions and Recommendations adopted by the International Labour Conference are of general application, that is, they cover *all* workers, irrespective of citizenship, even though since the Organization's inception there has been an awareness of the need to adopt instruments specifically protecting migrant workers.

38. Therefore, although they do not contain provisions dealing specifically with migrant workers, the following instruments either contain provisions relating to them, or the Committee has referred to the situation of migrant workers in supervising their application in recent years: the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); the Forced Labour Convention, 1930 (No. 29); the Labour Inspection Convention, 1947 (No. 81); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);

---

[7] GB.271/4/2, para. 11.

the Employment Service Convention, 1948 (No. 88); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Maternity Protection Convention (Revised), 1952 (No. 103); the Abolition of Forced Labour Convention, 1957 (No. 105); the Indigenous and Tribal Populations Convention, 1957 (No. 107); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111);[8] the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111),[9] the Workers' Housing Recommendation, 1961 (No. 115);[10] the Employment Policy Convention, 1964 (No. 122); the Human Resources Development Recommendation, 1975 (No. 150);[11] the Occupational Safety and Health Recommendation, 1981 (No. 164);[12] the Termination of Employment Convention, 1982 (No. 158); the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169);[13] the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168);[14] the Indigenous and Tribal Peoples Convention, 1989 (No. 169);[15] and the Private Employment Agencies Convention (No. 181)[16] and Recommendation (No. 188),[17] 1997. This list is by no means exhaustive. Mention should also be made of the numerous observations formulated by the Committee during its supervision of the application of the maritime Conventions.

B. Other ILO activities in the field of migration

39. In addition to the adoption and supervision of standards, the ILO has, in recent years, undertaken a number of activities in the field of migration aimed at improving the situation of millions of migrant workers across the globe. The following information is not intended to be exhaustive, but to serve as an indication of the extent and variety of programmes initiated by the Office.

---

[8] For example, *Antigua and Barbuda, Argentina, Australia, Belarus, Belgium, Bulgaria, Cameroon, Denmark, Dominican Republic, Ethiopia, France, Ghana, Greece, Hungary, Kuwait, Mauritania, Mongolia, Nepal, Netherlands, New Zealand, Norway, Panama, Poland, Romania, Russian Federation, Saint Lucia, Slovakia, Spain, Tajikistan, Ukraine,* the former *USSR.*

[9] Para. 8.

[10] Para. 5 of the part entitled "Suggestions concerning methods of application".

[11] Part IX, entitled "Migrant workers" (paras. 57-60).

[12] Para. 4(d) of Part III, entitled "Action at the national level".

[13] Preamble, para. 15 and Part X, entitled "International migration and employment" (paras. 39-44).

[14] Arts. 8 and 26(1)(i).

[15] Art. 20(3)(a).

[16] Preamble and Art. 8(2).

[17] Para. 8(b).

1. Recent ILO activities

40. In April 1997, the ILO held a Tripartite Meeting of Experts to consider the future activities of the ILO in the field of migration. The outcome of this Meeting was the adoption by the Governing Body of two sets of guidelines[18] for member States, aimed at preventing the abuse of particularly vulnerable migrant workers. The first set of guidelines dealt with special protective measures for migrant workers in time-bound activities and focused upon such issues as family reunification, provision of accommodation, wages and other terms of employment, freedom of association, social security and conditions of return of short-term migrant workers. The second set of guidelines related to special protective measures for migrant workers recruited by private agencies, and focused on the limitations which should be placed on the activities of private agents in relation to confiscation of travel documents, advertising and soliciting applications for positions that, in reality, do not exist, provision of false information to prospective migrants, and other such malpractices.

41. The Tripartite Meeting also provided the occasion to develop a new mechanism in the field of international labour migration, known as *pattern and practice studies*. These studies, which are independent of, but complementary to the provisions of the ILO instruments, result from the ILO being requested to investigate allegations of persistent and widespread exploitation of migrant workers in States. Allegations may originate with workers' and employers' organizations, but the procedure can also be triggered by a government seeking the Office's advice on incidents occurring in their territory with respect to migrant workers. The conclusions of such a study are intended to be submitted to an informal meeting bringing together representatives of the government, and of workers' and employers' organizations for discussion of the findings. The principal advantage of this new development is its low-key approach, by which the ILO can actively help constituents to improve the daily working conditions of migrants. Its important and novel aspect is its informality: through this mechanism, ILO constituents are given the opportunity to seek the Office's expertise on issues of concern, without initiating formal and highly public Convention-based procedures. As at 11 December 1998, the new procedure has not been used.

42. Also in 1997, the Governing Body of the ILO supported the creation of what is to be known as the *International Labour Migration Database*. This interactive tool will contain information, both quantitative and qualitative, on the numbers and flows, as well as living and working conditions of migrant workers in sending and receiving countries throughout the world. The database aims at filling a gap in information provision to labour ministries, workers' and employers' organizations, immigration authorities, academics, researchers and

---

[18] Guidelines are adopted by ILO technical meetings to provide indications of best practice on conditions of work in particular sectors. They do not have the legal force of Conventions and Recommendations, but are useful when such instruments have not yet been adopted on a given subject.

NGOs on the nature and extent of international labour migration and its consequences. A limited version of the database is scheduled to appear in the course of 1999.

43. The ILO continues to undertake research in a number of regions of the world, and regularly publishes books and working papers. Most notable in recent years was the development of two manuals aiming to serve policy-makers and administrators involved in the management of migration.[19]

2. *Technical cooperation and technical advisory services*

44. The major part of ILO's activities in the field of migration consists of providing assistance to countries of emigration and immigration in the formulation of migration policies and legislation, and in managing migratory flows more effectively, in line with the provisions of the ILO instruments. For migrant-receiving countries, this assistance involves developing and strengthening institutions, procedures and national regulations covering the recruitment, employment and return of foreign labour, as well as putting mechanisms in place to encourage the integration of long-term migrant workers and to regulate the activities of private recruitment agencies. For migrant-sending countries, assistance relates to the protection of nationals abroad, facilitating both the departure and return of migrants, monitoring remittance flows, and again, regulating the activities of private recruitment agencies. Assistance is provided to both sending and receiving countries to develop and strengthen measures to combat irregular migration and employment, and to protect the basic human rights of workers.

45. In recent years, ILO assistance in the field of migration has usually taken the form of policy analysis and guidance to constituents having queries on implementing or improving national, bilateral and/or regional migration policies, as well as assistance to workers' and employers' organizations. Recent examples include a workers' seminar in *Tunisia* which brought together representatives from eight North and West African trade unions and international specialists in late 1992; assistance to the Ministry of Labour and Social Policy of *Poland* in the preparation and holding of a regional conference on labour migration in Central and Eastern Europe; and missions to *Costa Rica* and *Nicaragua* in late 1995 to advise on irregular migration flows between the two countries. Requests for similar types of assistance have been received from countries in Central and Eastern Europe, the countries of the Commonwealth of Independent States (CIS), as well as countries in the Caribbean and African regions.

---

[19] W.R. Böhning: *Employing foreign workers: A manual on policies and procedures of special interest to middle- and low-income countries* (Geneva, ILO, 1996); M.I. Abella: *Sending workers abroad: A manual for low- and middle-income countries* (Geneva, ILO, 1997).

3. Other projects

46. In recent years, one of the most significant projects to be undertaken by the Office was a regional programme entitled *Informal network on foreign labour in Central and Eastern Europe* which brought together policy-makers and legislators from countries of the region in an informal setting to develop and improve bilateral and multilateral migration policies. A second project was the 1994-95 *Interdepartmental Project on Migrant Workers*, which resulted in a number of studies and publications on a variety of subjects pertinent to the international migration debate as well as the provision of technical advisory services to *Kuwait* following the Gulf War and the consequences it had upon foreigners working in the country and the development of a legislative database on migrant workers' questions.

Box 1.1

Labour market discrimination against migrants and ethnic minorities

In the early 1990s, the Office launched a project entitled "Combating discrimination against (im)migrant workers and ethnic minorities in the world of work". The aim of the project was to reduce discrimination against migrant workers and ethnic minorities by informing policy-makers, legislators, employers, workers, NGOs and persons engaged in anti-discrimination training on how legislative measures and training activities could be rendered more effective, based on an international cross-comparison of the efficacy of such measures and activities.

In the course of the project, ILO researchers uncovered high levels of labour-market discrimination against non-nationals and those perceived to be non-nationals across industrialized, migrant-receiving countries. Through an analysis of the legal and training measures which have been developed in these countries, the ILO drew up a series of conclusions and suggestions for action as to how protection against labour-market discrimination could be more effectively guaranteed for regular-entry and legally resident migrants.

This project demonstrated that legal provisions outlawing labour-market discrimination on the grounds of nationality are most effective when enacted through comprehensive civil legislation, backed up by an enforcement body with wide-ranging powers and functions. Complementary measures such as positive action schemes, labour-force surveying, contract compliance and workplace training were also shown to be essential to ensure effective protection of these workers.

To consult the findings of this project, see ILO: *Draft manual on achieving equality for migrant and ethnic minority workers*, Geneva, ILO, 1998.

47. Another project of note stemmed from the joint ILO/UNHCR (United Nations High Commissioner for Refugees) regional meeting in 1992 and consisted of an initiative to bring three northern African countries — *Algeria, Morocco* and *Tunisia* — together with interested European countries — *Belgium, France, Germany, Italy* and *Spain* — as well as a number of international organizations — the United Nations Development Programme (UNDP), the European

Community and the World Bank — to consider jointly what kinds of programmes and which form of international support would be most promising in an institutionalized effort to reduce the need of Maghrebians to leave their countries for employment abroad. The project resulted in seed-money being made available to develop micro-enterprises in *Morocco* and *Tunisia*, and the issue was subsequently put on the agenda of the European Commission in the course of its development work in the region.[20]

48. In sum, the ILO has developed a comprehensive and wide-ranging set of programmes dealing with the causes and consequences of international labour migration which build upon the provisions of the ILO instruments, and support their increased ratification and implementation through a variety of informal means.

Section II. Other standards and activities in the field of migration

A. United Nations instruments and activities

49. The Universal Declaration of Human Rights, adopted by the United Nations organization 50 years ago, specifies that all individuals, irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, are born free and equal in dignity and rights. The formulation of rights and freedoms stipulated in the Universal Declaration of Human Rights apply equally to migrants as to any other individual, as do the provisions of instruments which have subsequently been developed. Since 1948 however the singular vulnerability of workers employed outside their countries of origin has been the subject of increasing concern throughout the United Nations system. In a recent statement, the Secretary-General of the United Nations stated that:

> [...] there is a need to formulate and strengthen measures at the national level to ensure respect for, and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in sectors of many societies, and to promote greater harmony and tolerance in all societies.[21]

1. Relevant United Nations instruments

50. Following a lengthy drafting process, to which the ILO contributed actively, on 18 December 1990, the General Assembly of the United Nations adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It recognized and built upon the provisions contained in existing ILO Conventions,[22] and in many ways went beyond them. It extended to migrant workers who enter or reside in the host country illegally (and members of their families) rights which were previously limited to individuals involved in regular migration for employment, going beyond those elaborated in Part I of ILO Convention No. 143. While the long-term objective of the United Nations Convention is to discourage and finally eliminate irregular migration, at the same time it aims to protect the fundamental rights of migrants caught up in such migratory flows taking account of their vulnerable position. Other significant aspects of the Convention include the fact that ratifying States are not permitted to exclude any category of migrant worker from its application, the "indivisibility" of the instrument, and the fact that it includes every type of migrant worker, including those which are excluded from existing ILO instruments.[23]

---

[20] For further information see ILO "International migration and migrant workers", report to the Committee on Employment and Social Policy, GB.265/ESP/2, Mar. 1996, para. 44.

[21] Agenda for Development, Ch. E: *Population, development and international migration*, para. 140.

51. This new Convention has, however, received but a lukewarm welcome from States. While 20 ratifications are required for the Convention to come into force, as of 11 December 1998, only nine States had ratified or acceded to it.[24] Further, as is the case with the ILO instruments, the majority of States parties to this Convention are, on the whole, migrant-sending States which, while extremely important in terms of protection of migrants prior to departure and after return, hold little influence over the daily living and working conditions of the majority of migrant workers. A Global Campaign for Ratification of the Convention on Rights of Migrants was launched in Geneva in 1998. Pending its entry into force, other United Nations instruments are of more immediate relevance to the protection of migrant workers.

52. The 1990 Convention is the only United Nations instrument of direct relevance to migrant workers, but the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is also relevant, although to a lesser degree. The ICERD, currently one of the most widely ratified of the United Nations human rights conventions,[25] binds States parties to outlaw discrimination on the grounds of race, colour, descent, or national or ethnic origin against all individuals within the jurisdiction of the State and to enact sanctions for activities based upon such discrimination. However, the Convention does not apply to "distinctions, exclusions, restrictions or preferences made by a State party [...]

---

[22] The Preamble to the Convention refers specifically in its fifth paragraph to the work of the ILO in the field of international labour migration.

[23] The Convention defines a "migrant worker" in Art. 2(1) as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". Cholewinski analyses the significance of the term "to be engaged" in relation to the drafting procedure; see R. Cholewinski.: *Migrant workers in international human rights law* (Oxford, Clarendon Press, 1997), pp. 150-151.

[24] *Bosnia and Herzegovina, Cape Verde, Colombia, Egypt, Morocco, Philippines, Seychelles, Sri Lanka* and *Uganda*. Two other States, *Chile* and *Mexico*, have signed the Convention, the first step towards ratification.

[25] 151 ratifications as at 11 Dec. 1998.

between citizens and non-citizens",[26] a point which has been reiterated on a number of occasions by members of the committee set up to monitor application of the ICERD.[27] That is to say, discrimination on the grounds of nationality, a type of discrimination to which migrants by definition are extremely vulnerable, is not outlawed by the Convention.

53. Several other United Nations instruments, while having no direct relevance to migrant workers, are of potential importance in terms of protecting them from discrimination and exploitation on grounds other than their non-national status. These include the Convention on the Elimination of All Forms of Discrimination against Women (1979); the International Covenant on Economic, Social and Cultural Rights (1966); the International Covenant on Civil and Political Rights (1966); the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); and the International Convention on the Rights of the Child (1989).

2. *United Nations activities in the field of migration*

54. The United Nations has also engaged in a number of other activities in the field of migration. At each of a number of recent international conferences, notably the World Conference on Human Rights in Vienna in 1993,[28] the International Conference on Population and Development in Cairo in 1994,[29] the World Summit for Social Development in Copenhagen in 1995,[30] and the Fourth World Conference on Women in Beijing in 1995,[31] considerable time was devoted to the issue of international migration, and the international community has taken advantage of these occasions to recognize the need for more complete legal protection of migrant workers.

55. The United Nations General Assembly has placed the protection of migrant workers on its agenda on several occasions, and has adopted a number of resolutions covering such issues as trafficking of female migrants and children;

---

[26] ICERD, Art. 1.2.

[27] See, inter alia, HRI/GEN/1/Rev.2 (1993) and CERD/C/304/Add.35 (1997).

[28] "The World Conference on Human Rights urges all States to guarantee the protection of the human rights of all migrant workers and their families." See s. 2 of the Vienna Declaration and Programme of Action, A/CONF.157/24, UNO 1993.

[29] "Countries should guarantee to all migrants all basic human rights as included in the Universal Declaration of Human Rights." See Ch. X of the Report of the International Conference on Population and Development, A/CONF.171/13, UNO 1994.

[30] States should "formulate or strengthen measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families". See Ch. 1, resolution 1, Annex 1/2 of the Report of the World Summit for Social Development, A/CONF.166/9, UNO 1995.

[31] "Governments must ensure the full realization of the human rights of all women migrants, including women migrant workers, and their protection against violence and exploitation." See Ch. 1, resolution 1, Annex II of the Report of the Fourth World Conference on Women, A/CONF.177/20, UNO 1995.

violence against female migrants; and contemporary forms of racial discrimination against migrant workers.[32]

56. The Economic and Social Council (ECOSOC) has adopted a number of resolutions and decisions on this point and has decided to hold a World Conference against Racism, Racial Discrimination, Xenophobia and Other Related Intolerance, taking into account the specific problems of migrants and discrimination, to be held no later than the year 2001, within the framework of the Third Decade to Combat Racism and Racial Discrimination.[33] Among the other activities of ECOSOC, the creation of the Administrative Committee on Coordination Task Force on Basic Social Services for All, and its Working Group on International Migration, of which the ILO was the lead agency, is notable.[34] One of the most important decisions taken by this Working Group was to convene an international technical symposium in the Hague in 1998 covering issues relating to international migration and refugees. At the regional level, the economic commissions of ECOSOC contribute to the migration debate through numerous regional initiatives and studies. Regional meetings such as the Expert Group Meeting on Violence Against Migrant Women Workers, which took place in Manila in 1996, also fall under the ECOSOC.

57. In recent years, the United Nations Commission on Human Rights has devoted considerable time to the issue of migration and the problems migrants face, notably through the adoption of resolutions but also through the creation in 1997 of the working group of intergovernmental experts on the human rights of migrants which has, to date, met three times. The ILO has played an active role in the meetings of this working group. Through the Commission on Human Rights, a Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance was also appointed, who addresses issues of relevance to migrant workers and to whose reports the ILO has provided substantial input.[35]

58. A resolution on the situation of migrant workers and members of their families was adopted unanimously by the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, in 1998. The resolution appealed to governments to ratify the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as ILO Conventions Nos. 97 and 143.[36]

---

[32] For General Assembly documents, see, inter alia, A/RES/52/109; A/RES/52/98; A/RES/52/97; A/RES/51/85; A/RES/51/81; A/RES/51/80; A/RES/51/79; A/RES/51/66; A/RES/51/65, A/RES/50/135; A/RES/49/147.

[33] For ECOSOC resolutions, see, inter alia, 1997/2; 1993/8; 1991/35; 1990/78; 1990/46. For ECOSOC decisions, see, inter alia, 1995/294.

[34] In Feb. 1996, the Working Group published and disseminated widely a report in the form of final guidance notes, entitled *Issues in International Migration and Development*, updated in Sep. 1996.

[35] For examples of Commission resolutions, see, inter alia, 1997/73; 1996/21; 1995/12. The working group takes its legislative authority from the Commission on Human Rights resolution 1997/15. See E/CN.4/1998/L.27; E/CN.4/1998/L.28; E/CN.4/1998/L.30. The mandate of the Special Rapporteur is contained in the Commission on Human Rights resolutions 1993/20 and 1994/64 and the Economic and Social Council decision 1994/307.

59. The work of the United Nations High Commissioner for Refugees (UNHCR), with its focus upon migration in the form of refugee movements, complements the work done on economically induced labour migration by the ILO.

60. The United Nations Development Programme (UNDP) concentrates its migration activities in preventing large-scale forced migration movements as well as undertaking research and planning to help individual countries manage voluntary migration flows more successfully. Regional bureaux of UNDP in Africa and the Arab States also carry out initiatives to address problems resulting from forced migrations and displacement. The United Nations Population Fund (UNFPA) has undertaken several significant projects in the field of migration, including the organization of regional and subregional meetings of migration policy-makers. National data-collection programmes also feature highly in the migration agenda of UNFPA, and the Fund continues to provide support for many ILO activities in the field of migration.

3. United Nations specialized agencies

61. The other specialized agencies of the United Nations system also bring their specific expertise to the migration field. The United Nations Educational, Scientific and Cultural Organization (UNESCO) addresses the problems of migration through information provision and promotional activities as well as regional projects dealing with such aspects of the migration process as cultural integration and identity. UNESCO also developed the Asia-Pacific Migration Research Network; this is a major social science policy-research programme which studies national and international consequences of migratory movements in the region. The World Health Organization (WHO), while undertaking no specific projects in relation to migrants' health issues, tackles the causes and consequences of diseases which are likely to have disproportionate effect on individuals involved in migratory movements because many migrants end up performing dirty and dangerous jobs, often under degrading working and living conditions which are more likely to give rise to ill health. Similarly, the United Nations International Drug Control Programme does not explicitly tackle the issue of migration, but does target programmes specifically at those who are most vulnerable in terms of drug trafficking and abuse, including refugees, returnees and young migrants. The Food and Agriculture Organization (FAO) attaches great importance to the link between international migration issues and food security. Its Rural Development Division undertook a study on international migration and rural development in West Africa and *Mexico* and the Special

---

[36] Sub-Commission resolution 1998/10.

Relief Operations Service provides aid to migrants and refugees caught in emergency situations.[37]

B. Regional instruments and intergovernmental activities

62. The management of international migratory flows has also in recent years featured highly on the agendas of a number of regional and subregional bodies. Agreements and institutions with the aim of regulating the entry, stay, treatment and departure of non-national workers have become well established in most regions of the world. While the variety of instruments and activities operating at the regional or subregional level is too wide to be analysed in much detail in this survey, some of the most prominent initiatives merit attention.

1. Regional migration instruments

63. In **Europe**, the Council of Europe's instruments in the field of labour migration are the most advanced, covering general human rights as well as more specific agreements relating to migrants and migrant workers. Of the former, the European Convention on the Protection of Human Rights and Fundamental Freedoms (1950), and the European Social Charter (1961) and its Additional Protocol (1988), include a number of provisions relating to individuals living and working in countries of which they are not nationals, covering the rights to privacy, family life, the right to engage in a gainful occupation in another member's territory, provision of information to migrant workers, facilitation of the migration process, equality of treatment of nationals and non-nationals in employment, the right to family reunification, and guarantees against expulsion, etc.[38] These instruments, however, as with all Council of Europe instruments, are relevant only to migrants who are citizens of Council of Europe Member States, and their application is conditional on reciprocity.

64. Council of Europe instruments dealing specifically with migrants and migrant workers include the European Convention on the Legal Status of Migrant Workers (1977) which applies to nationals of a Contracting Party who have been authorized by another Contracting Party to reside in its territory in order to take up paid employment. This Convention includes provisions relating to the main aspects of the legal status of migrant workers, and especially to recruitment, medical examinations and vocational tests, travel, residence and work permits, family reunion, housing, conditions of work, transfer of savings, social security, social and medical assistance, expiry of the contract of employment, dismissal and re-employment, and preparation for return to the country of origin. Other instruments dealing with different aspects of the life and work of migrants include the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality (1963) and the Convention on the Participation of Foreigners in Public Life at Local Level (1992).[39]

---

[37] See E/CN.9/1997/4.

[38] Other general instruments of some relevance to migrant workers include the European Convention on Social Security and its Protocol, and a series of recommendations of the Council's Committee of Ministers. See Council of Europe: *Activities of the Council of Europe in the migration field*, Strasbourg, 1996.

65. The Commission of the European Communities (EC) has also developed a significant body of regional norms with the aim of regulating intraregional migratory flows and treatment of non-national workers. In this regard, the focus of the EC has been primarily upon economic aspects of migration and integration internal to the region, although it has increasingly devoted attention to more social aspects. Among the most important regulations are: (a) Regulation No. 1612/68/EEC, dealing principally with equality of treatment in respect of access to employment, working conditions, social and tax advantages, trade union rights, vocational training and education, it also lays down guidelines for family reunification; and (b) Regulation No. 1408/71/EEC relating to the application of social security regimes to employed persons and the self-employed and to members of their families who move within the Community (modified by Regulation No. 1606/98/EC, 29 June 1998). The basic document determining in more detail the treatment of non-nationals within the region is the Community Charter of the Fundamental Social Rights of Workers (1989). While not legally binding in itself, this document lays down guiding principles for the treatment of Community nationals in the field of employment. Directives emanating from the EC cover such issues as freedom of movement and residence, right to remain in the territory of another Member State after employment has been terminated, education of children of migrant workers, issues of health and safety of migrant workers, and the right to vote and stand in elections of other Member States. While the applicability of these instruments is limited in that they deal solely with migration internal to the region, it has been argued that the recent enlargement of the European Union, the number of countries still wishing to enter the region and the development of other comparable trade zones worldwide has served to increase their significance beyond the geographic boundaries of the region.[40]

66. In **Africa**, again the regional standards can be divided into those which deal with human rights in general, and those which have specific relevance to migrant workers. Of the former, the African Charter on Human and Peoples' Rights (1981), is the most significant. It protects individuals from discrimination based upon a number of grounds, and prohibits the mass expulsion of non-nationals. Of the instruments relating to labour migration, it should be pointed out that, as with the EC, most standards are focused primarily upon economic integration, touching on social and cultural aspects of migration as secondary issues.

---

[39] The Council of Europe has also adopted a number of instruments relating to the protection of national minorities and religious and ethnic minorities. While these may overlap with the protection of migrant workers, as is the case with the ICERD, they are not of relevance to migrant workers per se. In 1997, a new Convention, the European Convention on Nationality, was opened for signature, and may prove to be of relevance to migrants intending to reside permanently in a State of which they are currently not nationals. The activities in relation to national minorities of the Organization for Security and Cooperation in Europe (OSCE) should also be noted in this regard, in particular the work of the High Commissioner on National Minorities.

[40] See Cholewinski, op. cit., pp. 324-325.

67. On the subregional level there are a number of instruments, often little known and utilized, which tackle the problems specifically related to intraregional migration. Of these, in 1975 the Economic Community of West African States (ECOWA) adopted the Treaty of Lagos, which guarantees freedom of movement and residence, as well as equality of treatment in relation to cultural, religious, economic, professional and social activities between nationals of all ratifying States. The 1979 Protocol to this Treaty entitled all citizens of the ECOWA to enter, reside and settle in the territory of Member States. The Central African Customs and Economic Union adopted an agreement in 1973 which recognizes the principle of non-discrimination on the grounds of nationality in employment, remuneration and other working conditions, on the condition that individuals migrating for employment are already in possession of a job offer. This agreement was supplemented in 1985 with a social security convention on migrant workers. In 1978 the Economic Community of the Great Lakes' Countries adopted a convention on social security concerning Community nationals who have worked in another member country and, in 1985, a convention on the free movement of people, which is specified as a process to be achieved over a period of up to 15 years.

68. In the **Arab** region, the fundamental document relating to human rights, the Cairo Declaration on Human Rights in Islam, was adopted by the Organization of the Islamic Conference in 1990. It guarantees for all individuals freedom from discrimination based on various grounds. Specifically in the field of migration, the Agreement of the Council of Arab Economic Unity (1965) provides for freedom of movement, employment and residence and abolishes certain restrictions upon movement within the region. In 1968, the Arab Labour Organization developed the Arab Labour Agreement, intended to facilitate labour movement in the region, and giving priority within the region to Arab workers. These same provisions were reiterated in the 1970s with the strengthening of measures to retain jobs for Arab workers and to deport non-Arab workers from the region. This focus on reducing the participation of external migrants from the Arab labour market is apparent throughout the 1980s, with the adoption of the Strategy for Joint Arab Economic Action and the Charter of National Economic Action. The former determines that "Arab manpower must be resorted to increasingly to reduce dependence on foreign labour", while the latter breaks down legal barriers between nationals and migrants from other Arab States, providing for freedom of movement and equality of treatment. The Arab Declaration of Principles on the Movement of Manpower (1984) stressed once more the need to give preference to Arab nationals before nationals of third countries, calling simultaneously for the strengthening of regional bodies and intraregional cooperation.

69. The countries of **Asia** and the **Pacific** have not yet established any regional agreements or institutions dealing specifically with either human rights or migrants' rights, though the subject has been broached in discussions of the Asian Pacific Economic Cooperation Forum (APEC).

70. In the **Americas** the regional standards in the field of human rights in general are the Organization of American States' (OAS) American Declaration on the Rights and Duties of Man (1948) and the 1969 American Convention on Human Rights both guarantee freedom from discrimination. In Latin America, the Southern Common Market (MERCOSUR) Pact of 1995 is expected to formalize the current informal flow of workers across the internal borders of the region, while signatories to the Cartegena Agreement or Andean Pact[41] approved in 1977 the creation of the Andean Migration for Employment Instrument (decision 116) and in 1996 the creation of the "Andean Migration Card" which aims to facilitate migration flows in the subregion (decision 397). The North American Free Trade Agreement (NAFTA) deals only marginally with migration issues through the North American Agreement on Labor Cooperation and also in the body of NAFTA itself, which permits the entrance of a certain quota of investors, highly qualified personnel and executives of multinational corporations between signatory States.

2. *Intergovernmental activities*

71. Beyond standard setting, on the regional level, a number of intergovernmental institutions are active and contribute much to the study of cross-border migration. Of primary importance is the work of the International Organization for Migration (IOM), an organization which organizes its activities according to four broad categories: (a) humanitarian migration, (b) migration for development, (c) technical cooperation, and (d) migration debate, research and information provision. IOM has been promoting strategic planning on the management of orderly migration, basing itself on ILO standards as far as the rights of migrant workers are concerned. It operates a wide variety of programmes and cooperates with the United Nations organizations and specialized agencies on a number of migration projects. The organization also maintains a close and fruitful collaboration with the ILO. The Organisation for Economic Co-operation and Development (OECD) publishes an annual report on contemporary trends in migration within member States.[42]

72. In **Europe**, the activities of the Commission of the European Communities (EC) have contributed to combating discrimination, inter alia against migrant workers, in the form of the declaration of 1997 as the European Year Against Racism and Xenophobia. One of the most prominent events of that year was the insertion of a specific anti-discrimination clause in the Treaty of Amsterdam which outlawed discrimination on the grounds of, inter alia, racial or ethnic origin. The second significant event of the year was the creation of the

---

[41] In 1966, the States of the subregion concluded the subregional integration agreement which created the Andean Community.

[42] For example, *Trends in international migration*, OECD Annual Report, 1997 (published 1998).

European Monitoring Centre on Racism and Xenophobia which aims to collect and disseminate data on the occurrence of racism, xenophobia and anti-Semitism throughout the European Union. Activities of the Council of Europe also deal with various aspects of the migration process in Europe, above and beyond the development of regional norms described above. Supporting activities include the establishment of the European Committee on Migration (CDMG) and the Specialist Group on Integration and Community Relations, both of which meet regularly to discuss issues of common concern and to initiate research projects. In 1993 the Council of Europe created the European Commission against Racism and Intolerance (ECRI).

73. In **Africa** the most significant regional activities in the field of migration have been undertaken by the Central African Customs and Economic Union, the Common African and Mauritian Organization and the African, Caribbean and Pacific Group of States (ACP). The latter regularly organizes seminars and conferences on the subject of migration from the region to the industrialized countries of Europe and North America.

74. In the **Americas**, one event of significance is the Regional Conference on Migration, which held its first session in 1996 on the initiative of the Mexican Government. During this Conference, the governments of Central American countries, *Canada*, *Mexico* and the *United States* undertook to increase public awareness of the human rights of migrants as a means of promoting respect for migrants' dignity, combating anti-immigrant attitudes and eradicating illegal acts against migrants. At the second session of this Conference, held in 1997, a Plan of Action was drawn up comprising specific activities to be undertaken by the participating governments, including the distribution of information material to foreign diplomatic and consular missions, to competent governmental authorities, and to the public on the human rights of migrants, with the aim of heightening public awareness. At the Second International Meeting of Ombudsmen, entitled "Building the rule of law, peace, development and human rights" held in 1996 in *El Salvador*, the representatives of the various national institutions for the promotion of human rights signed a declaration urging governments of the region to respect the fundamental rights of migrants, regardless of whether or not they hold regular or irregular status in the host country.

75. Information on intergovernmental activities in **Asia**, the **Pacific** and the **Arab** regions is sparse and it can be concluded that such activities are few. However, the extent of bilateral negotiations appears to have gradually increased over recent decades.

C. Bilateral agreements

76. Increasingly, many States are turning to bilateral agreements to regulate the most significant emigration and immigration flows.[43] The advantages of such agreements are that they can be adapted to the particularities of specific groups of migrants, and that both the sending and the receiving State can share the burden of ensuring adequate living and working conditions as well as monitoring, and more actively managing, the pre- and post-migration processes. The use of bilateral instruments as a means of regulating migration was first developed in the 1960s when the countries of Western Europe concluded a series of bilateral agreements with countries which were keen to provide a source of temporary manpower. *Belgium, France*, the then *Federal Republic of Germany*, *Netherlands* and *Switzerland* at one time or another all concluded agreements with one or more labour-supplying countries along the Mediterranean rim. In the 1970s the Middle East emerged as a new migrant-receiving region, and attempts were made to secure similar agreements between for example, *Bangladesh*, and the *Islamic Republic of Iran*, *Iraq*, *Libyan Arab Jamahiriya* and *Oman*; and *Pakistan* with *Jordan*; and the *Philippines* with *Gabon*, *Islamic Republic of Iran*, *Iraq* and *Jordan*.[44] Since then, bilateral agreements regulating migration have developed throughout the world. Of the regions, Asia appears to have had the least success in the regulation of migration flows through bilateral agreements, and notwithstanding the agreements concluded between the *Philippines* and some Member States of the European Union, no bilateral agreements have been located between Asian sending countries and receiving countries in other regions, despite their efforts, to the Committee's knowledge.[45]

77. The ILO has consistently recommended the formulation of bilateral instruments as a means of managing migration flows more effectively. The annex to Recommendation No. 86 provides an elaborate model of a bilateral agreement, and several provisions of the two relevant Conventions stress the role of bilateral cooperation in the field of migration.[46]

D. Employers' and workers' organizations and non-occupational NGOs

78. Employers' and workers' organizations have the greatest potential among NGOs in the field of migration. Workers' organizations have developed a variety of programmes relating to the consequences of migratory movements. At the international level, the International Confederation of Free Trade Unions (ICFTU) and Public Services International (PSI), monitor the migration debate and participate in a number of international activities in the field. For example, in 1994, the Asian and Pacific Regional Organization of the ICFTU organized a conference entitled "The role of trade unions in the protection of migrant workers", to discuss the ways in which trade unions can contribute to the protection of labour migrants, through such means as information provision, counselling services, regulation of employment agencies, cooperation with governments, integration assistance and building networking capacity. Of particular importance, it concluded that States should be encouraged to ratify and respect ILO standards on migrant workers. PSI has also carried out a number of activities in relation to the role of trade unions in protecting migrant workers, including the creation of a Migrant Workers' Working Group which first met in 1995 with the aim of developing a strategy for PSI's future activities in the field of migration, to which the ILO provided substantial input.[47]

---

[43] The conclusion of bilateral agreements relating to international migration of course does not only concern the regulation of migration flows but also the social consequences of migration, notably in the field of social security.

[44] It has been argued that the outcome of these attempts were not bilateral labour migration agreements as such, but rather "more like framework agreements or statements of mutual cooperation regarding the recruitment and protection of foreign workers", Abella, op. cit., p. 64.

[45] See footnote 57 (Ch. 4).

[46] For more details on the development of bilateral migration agreements and the role of the ILO, see Abella, op. cit., pp. 63-67, and Böhning, op. cit, pp. 29-32.

79. On the regional and national levels, a number of federations of trade unions have been active in promoting human rights of migrants. These activities are most comprehensively documented in European States, although parallel initiatives can be found in other regions of the world. Of the European initiatives, one of the most significant actions taken by both employers' and workers' organizations was the development and signature in 1995 of the Joint Declaration on the prevention of racial discrimination and xenophobia and promotion of equal treatment at the workplace, proposing guidelines for the social partners in relation to equality of treatment of ethnic minorities and migrant workers. One of the follow-up activities to this Declaration was the compilation of a Compendium of Good Practice.[48] On the national level, to take one example of the numerous activities taking place, in Asia the All Pakistan Federation of Trade Unions has organized activities in the field, establishing a separate section for the welfare of migrant workers, and running a seminar in 1997 dealing with the promotion of welfare facilities for migrant workers and their families.

80. On the local level, both employers' and workers' organizations have clearly much to contribute to the protection of workers, and a host of local level initiatives can be identified. It can be argued, however, that the social partners have not been as active as they could have been in terms of promoting equality of opportunity and treatment of non-nationals in the workforce, though particular organizations can of course be singled out as having provided model initiatives in this area. It should be noted that, in the course of preparing this survey, very few of these organizations took the opportunity to communicate their comments to the Committee. The Committee can only emphasize the vital importance for workers' organizations in particular of action to protect migrant workers and to ensure their correct treatment. Not only are migrant workers in a legal situation potential members of trade unions in most countries, the possibility that the treatment given to illegal migrant workers will undercut the conditions of all workers is a constant danger.

---

[47] In 1996 the Working Group produced a policy paper. See Public Services International: *Going out to work: Trade unions and migrant workers* (PSI 1996).

[48] See *European compendium of good practice for the prevention of racism at the workplace* (European Foundation for the Improvement of Living and Working Conditions, 1997).

81. Other **non-governmental** action in the field of migration tends to focus on regional or subregional projects, often offering "grass-roots" assistance to migrants facing problems in areas where intergovernmental organizations' action is limited. Predictably, the most vulnerable migrants, that is, undocumented or irregular migrants, are often reluctant to approach governmental bodies when faced with discrimination, violence and exploitation, and it is here that non-governmental action is crucial. Non-governmental organizations also play a pivotal role in acting as a liaison between migrants and the State and disseminating information to migrants on their rights under law. Finally, NGOs can act as a lobbying mechanism in encouraging States to ratify or more actively implement the provisions of international instruments for the protection of migrant workers. The ILO maintains contact with those who operate in the field of human rights in general and migrants' rights in particular.

82. The scope and variety of both migration flows and measures taken by States, intergovernmental organizations, non-governmental organizations and employers' and workers' organizations to manage these flows, have increased dramatically in recent years. It is hoped that this increasing attention paid to the causes, consequences and conditions of international migration will continue and will have a positive effect upon the ability and interest of all actors to improve the situation of workers employed outside their own countries, as well as the situation of members of their families. The ILO instruments which form the basis of this study are at the heart of this growing debate.

CHAPTER 2

SCOPE OF THE INSTRUMENTS

83. The two Conventions and Recommendations forming the basis of this survey have as their common aim the protection of workers from discrimination and exploitation while employed in countries other than their own. The terms used in the titles and the texts of these instruments, as clarified through the preparatory work for their adoption and by the Committee in the supervisory process, spell out the scope of the key features of the instruments.

Section I. Summary of the instruments

A. Contents of the 1949 instruments

1. Migration for Employment Convention (Revised), 1949 (No. 97)

84. Born of the upheavals that occurred in Europe in the aftermath of the Second World War and prompted by a concern to facilitate the movement of surplus labour from this continent to other parts of the world, this Convention consists of 12 operative Articles and three annexes.

85. Under Article 11(1) of the Convention, the term "migrant for employment" means a person who migrates from one country to another with a view to being employed otherwise than on his or her own account. The scope of Convention No. 97 excludes frontier workers, the short-term entry of members of the liberal professions and artistes, and seafarers (Article 11(2)).

(a) Measures aiming to regulate the conditions in which migration for employment must occur

86. Under Article 1 of Convention No. 97, ratifying States undertake to make available on request to the ILO and to other Members information on national policies, laws and regulations relating to emigration and immigration; on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment; and concerning general agreements and special arrangements concluded on these questions. This exchange of information must be supplemented by cooperation between employment services and other services connected with migration (Article 7); and, where appropriate, cooperation against misleading propaganda (Article 3(2)). Lastly, Article 10 invites the Members concerned to enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the Convention.

(b) General protection provisions

87. The Convention provides for the maintenance of a free service to assist migrants and provide them with information (Article 2); Members undertake to take appropriate steps against misleading propaganda relating to emigration and immigration (Article 3(1)); measures to facilitate the departure, journey and reception of migrants for employment (Article 4); the maintenance of appropriate medical services (Article 5); and permission for migrants for employment to transfer their earnings and savings (Article 9). The Convention also prohibits the expulsion of migrants for employment admitted on a permanent basis in the event of incapacity for work (Article 8).

(c) Measures aiming to ensure equal treatment in a number of areas to regular migrant workers

88. Article 6 prohibits inequality of treatment between migrant workers and nationals arising out of laws or regulations or the practices of the administrative authorities in four areas: living and working conditions, social security, employment taxes and access to justice.

(d) Annexes

89. Under Article 14, each Member ratifying the Convention may, by an express declaration, exclude from its ratification any or all of the annexes. In the absence of such a declaration, the provisions of the annexes have the same effect as those of the Convention. The first two annexes deal with organized migration for employment, while the third, more general in scope, applies to migration for employment, whether organized or spontaneous.

(i) Annex I

90. Annex I, consisting of eight Articles, deals with the recruitment, placing and conditions of labour of migrants for employment recruited otherwise than under government-sponsored arrangements for group transfer.

(ii) Annex II

91. Annex II, consisting of 13 Articles, deals with the recruitment, placing and conditions of labour of migrants for employment recruited under government-sponsored arrangements for group transfer.

(iii) Annex III

92. Annex III, consisting of two Articles, regulates the importation of the personal effects, tools and equipment of migrants for employment.

2. Recommendation No. 86

93. This Recommendation, which is divided into eight parts (comprising 21 Paragraphs), recommends a series of measures intended to supplement the provisions of Convention No. 97, in particular as regards information and assistance to migrants (Part III); recruitment and selection (Part IV); equality of treatment in access to employment and supervision of conditions of employment (Part V). It also contains provisions aimed at protecting migrant workers against expulsion on account of their lack of means or the state of the employment market (Part VI). An annex to the Recommendation sets forth the methods of application of the principles laid down in Convention No. 97 and Recommendation No. 86, and is intended to serve as a model for the conclusion of bilateral agreements.

B. Contents of the 1975 instruments

1. Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

94. In 1975, when the Conference adopted this Convention, the international economic and social context had undergone radical changes since the adoption of the 1949 instruments. It was no longer a question of facilitating the movement of surplus labour, but of bringing migration flows under control and hence focusing on the elimination of illegal migration and suppressing the activities of organizers of clandestine movements of migrants and their accomplices.

95. Convention No. 143 consists of three parts: Part I (Articles 1-9) is the first attempt by the international community to deal with the problems arising out of clandestine migration and illegal employment of migrants, which had become particularly acute in the early 1970s. The provisions of Part II (Articles 10-14) substantially widen the scope of equality between migrant workers in a regular situation and nationals, in particular by extending it to equality of opportunity. Lastly, Part III (Articles 15-24) contains the usual final provisions, in particular Article 16, under which any Member which ratifies the Convention may exclude either Part I or Part II from its acceptance of the Convention at the time of ratification.

(a) Part I

96. Article 1 lays down the general obligation to respect the basic human rights of all migrant workers. The intention is to affirm, without challenging the right of States to regulate migratory flows, the right of migrant workers to be protected, whether or not they entered the country on a regular basis, with or without official documents. The struggle against clandestine immigration calls for the member States concerned to adopt a number of measures to *determine* systematically whether there are illegally employed migrant workers on its territory and whether any movements of migrants for employment depart from, pass through or arrive in its territory in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations (Article 2). At the same time, Members shall, where appropriate in collaboration with other Members, *suppress* clandestine movements of migrants and illegal employment of migrants and *punish* the organizers of illicit or clandestine movements of migrants and those who employ workers who have immigrated in illegal conditions, with the aim of preventing and eliminating abuses (Article 3).

97. At the national level, the Convention provides for the adoption and application of *sanctions* against persons knowingly assisting clandestine or illegal movements of migrants; persons illegally employing migrant workers (employers who are prosecuted on these grounds shall have the right to furnish proof of their good faith); and organizers of clandestine or illegal movements of migrants (Article 6). At the international level, systematic contacts and exchanges of information on these matters shall take place between the member States concerned (Article 4). One of the purposes of this cooperation is to make it possible to prosecute authors of manpower trafficking whatever the country from which they exercise their activities (Article 5). The representative organizations of employers and workers are to be consulted in regard to the laws, regulations and other measures provided for and designed to prevent and eliminate migration in abusive conditions and the possibility of their taking initiatives for this purpose are to be recognized (Article 7). Part I of the Convention also lays down certain protective measures for migrant workers who have lost their employment (Article 8) and for those in an irregular situation (Article 9).

(b) Part II

98. While the provisions of the 1949 instruments are intended to prohibit inequalities of treatment, including those arising out of the action of public authorities, Part II of Convention No. 143 aims to promote equality of opportunity and treatment and the elimination of discrimination in practice. The Conference considered that to eliminate discriminatory provisions or measures from national legislation or practice is not enough in itself, inasmuch that migrants suffer more than others from prejudice and discriminatory attitudes in employment. This is why the 1975 instruments go further and draw upon the provisions of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). They differ, however, on two points: first, national policy must not only *promote* but also *guarantee* equality of opportunity and treatment in employment and occupation for migrant workers and members of their families who are lawfully within the territory of the country of employment. Second, this equality of opportunity and treatment also applies to social security, trade union and cultural rights and individual and collective freedoms (Article 10). While leaving it to States to use methods appropriate to national conditions and practice, the Convention lays down a series of measures for this purpose (Article 12). Article 14, however, permits limited restrictions on equality of access to employment. Lastly, Article 13 requires States to facilitate the reunification of the families of migrant workers legally residing in their territory.

99. For the purpose of Part II of Convention No. 143, the definition of the term "migrant worker" excludes two further categories of workers in addition to those mentioned in the 1949 instruments: persons coming specifically for purposes of training or education and persons admitted temporarily to a country at the request of their employer to undertake specific duties or assignments for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments (Article 11).

2. Recommendation No. 151

100. This Recommendation consists of three parts: Part I lays down the measures to be taken to ensure respect for the principle of equality of opportunity and treatment between migrant workers lawfully within the territory of a Member and its nationals; Part II lays down principles of social policy intended to enable migrant workers and their families to share in the advantages enjoyed by nationals while taking account of such special needs as they may have until they are adapted to the country of employment; and Part III calls for the adoption of a number of measures to ensure minimum protection, in particular in the event of loss of employment, expulsion and departure from the country of employment.

Section II. Persons covered by the instruments

A. Definition of the term "migrant worker"

1. Employment

101. The scope of the ILO instruments in the field of migration is delineated principally by the Organization's mandate to protect the rights and freedoms of workers. That is to say, the instruments are primarily concerned with migrants for employment, as opposed to migrants in general. During the discussion leading to the adoption of the 1949 instruments, it was felt that the ILO was not the appropriate forum to discuss the many and varied problems which face migrants in general. However, it was pointed out that the provisions are intended to cover refugees and displaced persons, in so far as they are workers employed outside their home country.[1]

2. Families of migrant workers

102. The Conventions and Recommendations were also developed bearing in mind the fact that migration is not merely an economic phenomenon, but also a social one, and that often migration for employment does not affect only the individual involved in the employment relationship, but members of his or her family also. For this reason, throughout the text of these instruments, the protection of many of the rights outside the employment relationship as such are explicitly extended to the members of migrant workers' families. It should be noted that in Convention No. 97, and Part II of Convention No. 143 these provisions apply only to family members who are entitled by law to accompany the migrant.

---

[1] See ILC, *Record of Proceedings*, 32nd Session, Geneva, 1949, p. 285.

103. In Convention No. 97, these provisions relate principally to the migration process itself, that is, the entry and departure process. Convention No. 143 broadens the obligations by stipulating in Article 13 that governments must take all necessary measures to "facilitate the reunification of the families of all migrant workers legally residing in its territory".[2] The term "family" is defined in Article 13(2) of Convention No. 143 as "spouse and dependent children, father and mother", although some States have chosen to interpret the term more broadly.[3]

3. *International migration*

104. The term "migrant for employment" is defined in Article 11, paragraph 1, of Convention No 97 as "a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment". A similar definition forms the basis of the provisions of Part II of Convention No. 143, given in Article 11(1). It should be noted that this definition covers only migration between countries, that is, migrants are defined as those who cross international boundaries for the purposes of employment, and does not include those workers who move within a country for the purposes of employment.

4. *Clandestine migration and illegal employment*

105. The provisions of Convention No. 97, Recommendation No. 86 and Part II of Convention No. 143 deal only with the protection of migrant workers who have been "regularly admitted" for the purposes of employment. That is to say, individuals who have entered a country illegally are not covered by these provisions. Part I of Convention No. 143 and several provisions of Recommendation No. 151 deal explicitly, however, with the suppression of clandestine migration flows and the protection of irregular status migrants.

106. Article 1 of Convention No. 143 stipulates that ratifying States undertake to protect the basic human rights of "all migrant workers", and Article 3 specifies that the clandestine *movement* of migrants for employment is to be suppressed, as is the illegal *employment* of migrants. The introduction of the protection of irregular-status migrants to Convention No. 143 may appear at first sight to explain the low number of ratifications. However, this was not identified as a major barrier by most States which provided information for this survey, and it should be noted that of the 18 States which have ratified Convention No. 143, only one, *Norway*, has made a declaration under Article 16(1) excluding Part I.[4] Occasionally, governments claimed that clandestine migration and illegal employment was not an issue in their countries, and for that reason, several perceived Part I of the Convention to be of limited relevance.

---

[2] See below, paras. 470-500.

[3] For more details on the application of provisions relating to the families of migrant workers, see paras. 483-487 below.

5. Length of stay

107. The four instruments dealt with in this survey in general make no distinctions between workers who have migrated for permanent settlement, and those who have migrated for short-term or even seasonal work. States are not permitted to exempt any category of regular-entry migrant worker not specified in the instruments. In other words, no distinction can be made, within the provisions of the instruments, between migrants for permanent settlement and migrants who do not intend to stay for any significant length of time in the host country, such as seasonal workers.[5]

108. Certain provisions, however, relate only to migrants and members of their families who intend to settle permanently in the host country, in particular Article 8 of Convention No. 97 which is aimed at protecting migrant workers and their families from expulsion from the host country on the grounds of incapacity to work. It should be noted that some governments, including those of, for example, *Ghana*[6] and *Kenya*,[7] and even among those which have ratified Convention No. 97, such as *Hong Kong*[8] and *Israel*,[9] claimed that there were no migrants for permanent settlement in their territory, and that, therefore, these provisions did not apply to the national situation. In particular, the Committee notes the report of *Australia* which states that: "Part II of Convention No. 143 does not apply to migrant workers who have temporary entry visas." The Committee points out that according to Article 11(2) of Convention No. 143 short-term migrants cannot be excluded from its coverage. Article 11(2)(e) of Convention No. 143, which excludes certain short-term workers, will be addressed in more detail in paragraph 115 below.

---

[4] *Sweden* has made a declaration under Art. 16(1) excluding Part II of Convention No. 143 from ratification.

[5] For more information on the application of the instruments to seasonal workers, see ILC, *Record of Proceedings*, 32nd Session, Geneva, 1949, p. 285, and Appendix XIII, p. 578.

[6] Maximum length of stay for migrant workers in *Ghana* is two years.

[7] *Kenya* only issues permits for specific periods and specific jobs.

[8] Maximum length of stay on arrival for migrants is 12 months. It should be noted that the latest report which the Committee has received from *Hong Kong* was prior to 1 July 1997, when *China* resumed authority over the territory. Any references to *Hong Kong* in this survey thus refer to legislation and practice while previously under the authority of the *United Kingdom*.

[9] Maximum length of stay, with extensions, is 27 months, after which period the migrants must leave the country, with the exception of care givers, who can be extended to five years.

B. Reciprocity

109. Beyond the parameters specified above, it should be pointed out that the provisions of neither the 1949 nor the 1975 instruments operate on the basis of reciprocity (unlike the ILO Migration for Employment Convention, 1939 (No. 66), which never entered into force due to lack of ratifications). That is to say, a migrant worker does not have to be the national of a State which has ratified the instruments, or which guarantees equal treatment to the subjects of the ratifying State in order that the provisions apply. In recent years, the Committee has addressed a number of requests to governments[10] reminding them that the provision of these ILO instruments are not dependent upon reciprocity. This has not prevented some governments from providing information for this survey exclusively on migrants originating from particular regions, including countries which had signed reciprocity agreements with the reporting State,[11] or other States, such as the *United States* from emphasizing that the rights guaranteed to migrant workers depend, in the large part, upon reciprocity on the subject in the migrant's country of origin.

C. Exceptions

110. The Conventions and Recommendations being considered in this survey explicitly mention categories of workers which are excluded from their provisions. Article 11(2) of Convention No. 97 excludes "(a) frontier workers; (b) artistes and members of the liberal professions who have entered the country on a short-term basis; (c) seamen", and Recommendation No. 86 follows this. Article 11(2) of Convention No. 143 specifies these three exceptions, plus "(d) persons coming specifically for purposes of training or education; (e) employees of organizations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments". It should be noted that the exclusion of migrants given in Article 11(2) of Convention No. 143 applies only to the provisions of Part II of the instrument. Part I does not explicitly permit the exclusion of any category of migrant worker.[12] Recommendation No. 151 makes no explicit mention of exceptions. In addition to these exclusions, migrants who are self-employed are excluded by definition from the provisions of any of the four instruments.

---

[10] For example: *Benin, Brazil, Burkina Faso, Cameroon, Guinea* and *Portugal*.

[11] The report from *Norway*, for example, focused upon migrants emanating from other countries of the European Union, and contained little information on nationals of other countries working in *Norway*.

[12] The placing of the definition of the term "migrant worker" was the subject of some debate during the discussions leading to the adoption of the 1975 instruments. See ILC, *Record of Proceedings*, 60th Session, Geneva, 1975, p. 793.

111. The Committee considers that while the exclusion of self-employed workers from the scope of application of the instruments was justified when the instruments were adopted, today this is no longer appropriate. In effect, many regular- and irregular-status migrants are employed or self-employed and may even be working in the informal or marginal sections.[13] These migrant workers are offered no protection under the instruments considered in this survey and for this reason the Committee suggests that this point should be included in future discussions regarding these instruments.

112. The term "frontier workers" is not defined in either of the Conventions, and the report form adopted by the Governing Body on these Conventions asks ratifying States to define what they consider, from a legal perspective, the term to mean.[14] Some States, such as *Antigua and Barbuda*, *Grenada*, *Guyana* and *Malawi*, reported to the Committee that the concept of frontier workers is one which is not applicable, often for reasons of geography. In the past, definition of the term has occasionally led to difficulties of interpretation by member States.[15] Similarly, the working definition of "short-term entry" can be seen to vary widely across States.[16] The third exception, seafarers, was included in Conventions Nos. 97 and 143 principally because a body of international and national legislation — including a substantial number of ILO Conventions — had been developed of specific relevance to this group, and it was felt merited distinct protection.

113. The exclusion of "liberal professions and artistes" may be said to have taken on a significance which did not constitute a major migration problem at the time of the drafting of the 1949 and 1975 instruments. Of particular relevance to female migrants, the relatively recent phenomenon wherein women are recruited for employment abroad and issued with permits to work as dancers in night clubs or as hostesses in bars, when in reality they are forced to become "sex workers", has become an issue of increasing concern which did not form a significant element of the migration process 50 years ago.[17]

---

[13] See para. 16.

[14] *Germany* has defined the term to mean a person who "while maintaining his domicile in the frontier region of a given country, is employed as a wage-earner in the frontier region of a neighbouring country and returns to his place of domicile at least once a week". The compatibility of this definition with the provisions of s. 6 of the 1990 Order to Make Exceptional Regulations Concerning the Granting of Work Permits to Newly Arriving Foreign Workers was the subject of a direct request addressed to the German Government in 1995 (see note 15 below). *Malaysia*, for example, although it has no legal definition, interprets the term to mean "persons crossing national frontiers with temporary permits or visas to work and recrossing the frontiers after each day's work or after a short period of work, e.g., one week or one month continuously".

[15] For example, a direct request was addressed on this subject to *Germany* in 1995, questioning whether the definition given in s. 6 of the 1990 Order mentioned in note 14 above, stating that frontier workers had to return across the border *daily*, and to limit their occupation to two days per week, contradicted the definition given in previous reports to the Office.

[16] For example, *Malaysia* defines short-term workers as "usually interpreted as the entry of a migrant for employment for a short period, ranging from two weeks with a possible extension of up to three or six months at the most". The *United Kingdom* reports that "short-term entry" is "unlikely to be longer than six months".

114. The exclusion of students and trainees from the provisions of Part II of Convention No. 143 appears to reflect the legislation of a number of countries, such as *Finland*,[18] which also exclude these individuals from legislation relating to the employment of migrant workers. The Committee notes the report of the *Republic of Korea* which indicates that "industrial trainees" outnumber other foreign workers, but are not covered by the Labour Standards Act, and the Government questions whether this is in conformity with Convention No. 143. The Committee affirms that trainees are excluded from the definition of "migrant worker" as given in Article 11(2)(d) of Convention No. 143, but stresses that this applies only to the provisions of Part II of the Convention.

115. Article 11(2)(e) of Convention No. 143 adds to the list of exceptions "employees of organizations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties of assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments". The preparatory work[19] to Convention No. 143 stressed that this provision applies essentially to those workers who have special skills, going to a country to undertake specific short-term technical assignments.[20] The provision does not imply that *all* fixed-term workers can be excluded from the provisions of Part II of Convention No. 143, contrary to that which *Australia* appears to believe, which indicated that Part II does not apply to any temporary workers. As regards the specific case of seasonal migrant workers, the preparatory work to the adoption of Convention No. 143[21] shows that the definition of "migrant worker" makes "no distinction between seasonal workers and other categories of migrant workers (although the former could not always benefit in fact from all the provisions under consideration)".[22]

---

[17] See para. 23 above.

[18] s. 15 of the Aliens Act, No. 378, 1991.

[19] See particularly ILC, 60th Session, Geneva, 1975, Record V(2) Office Commentary, p. 19. It should be noted that during the second discussion, the proposal to add a more general provision "excluding all types of short-term workers who are admitted to perform specific functions or tasks for a limited or fixed period of time and have to leave the country when their employment ends" was not adopted (ILC, *Record of Proceedings*, 32nd Session, Geneva, 1949, Annex 34, para. 68).

[20] This exception refers to the situation of workers already employed in organizations or enterprises which carry out activities in a third country to which these workers are detached to undertake specific tasks. The European Community addressed this question in Directive No. 96/71/EC concerning the detachment of workers in the field of the provision of services.

[21] ILC, *Record of Proceedings*, 60th Session, para. 69, 1975.

[22] In this respect, see para. 378 below.

D. Spontaneous and organized migration

116. In principle, the provisions of the instruments relate to both spontaneous and organized forms of migration; that is to say they cover both government-sponsored and privately arranged recruitment as well as workers who migrate outside such programmes in the search for employment. Nevertheless, certain provisions, notably Annexes I and II to Convention No. 97, relate only to recruited workers — those who have a concrete offer of employment prior to entry into the host country. The general application to both spontaneous and organized migration is one which appears to hinder some States such as *Grenada*,[23] from fully applying the provisions of the Convention.

117. Subject to the categories of work listed above as exceptions, the provisions of the instruments are to be applied without discrimination to every category of employment. More specifically, the provisions must be applied equally to every member of the economically active non-national population. The State may not make distinctions between migrants on the basis of their type of occupation, the nature of their duties or the level of their salary. In the past the Committee has had to clarify this to a number of countries, pointing out that managers, executive staff, enterprise administrators and highly qualified technicians are migrant workers within the meaning of Article 11 of the Convention. The reports of some countries were unclear as to what extent these groups are covered both in legislation and in practice.[24] Clearly, the exclusion of certain categories of workers on the basis of their level of education, nature of employment or salary is contrary to the spirit, if not the letter, of the instruments.

Section III. Scope of measures to be taken

A. Flexibility of the instruments

118. In both 1949 and 1975, the International Labour Conference was at pains to design instruments which would grant protection from abusive conditions of employment and equality of opportunity and treatment to the greatest number of migrants in the greatest number of States. The form of the instruments themselves contributed towards one of the novel aspects of the 1949 instruments, in that they contained flexibly worded provisions specifying only the basic rights of regular-status migrants for employment. The annexes to Convention No. 97, on the other hand, which can be excluded from ratification, provided details of the means of achieving these ends. The first of the annexes relates to individually recruited migrants; the second to migrants recruited under group arrangements; and the third to the personal effects and tools of all migrant workers. This experimental form was designed in order that the maximum number of States possible could consider ratification, and to avoid presenting governments with rigid obligations which may not take into account the particular national situation of each country. At the time of drafting it was stated that the results of this experiment would be seen in the "number of ratifications as a Convention, not only of the Convention itself but of one or other of the annexes".[25] It should be noted that of the 41 countries which have ratified the Convention, only 16 have ratified all the annexes.

---

[23] *Grenada* provides medical services upon entry into the country only to those participating in government-sponsored migration programmes and not to those recruited by private agents or migrating independently.

[24] For example, as illustrated by information supplied by *Hong Kong* which stated that "most of the people who come to Hong Kong for employment are professional and well-qualified people and are regarded as sufficiently sophisticated to take care of their own needs".

119. The form of Convention No. 143 was designed with the same objective in mind, namely to allow as many States as possible to ratify. The division of the instrument into two parts, the first dealing with the management of migrations in abusive conditions and the second dealing with equality of opportunity and treatment between regular entry migrants and nationals and the inclusion of a selective ratification clause in Article 16(1) has aroused as much controversy as the structure of the earlier Convention. Nevertheless, despite the fact that States can exclude either part, it should be noted that, by virtue of Article 16(3), States which do so are still bound to report upon the extent to which effect has been given to the provisions of the part it has not ratified along with reasons for exclusion of the part from ratification.

120. In combination with their experimental structure, the flexible wording of the requirements of the two Conventions also contributed to their novelty. Article 3 of Convention No. 97 states that: "Each Member for which this Convention is in force undertakes that it will, *so far as national laws and regulations permit*, take all appropriate steps against misleading propaganda relating to emigration and immigration." Article 10 of Convention No. 143 states that: "Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, *by methods appropriate to national conditions and practice*, equality of opportunity and treatment."

B. Hierarchy of legal provisions relating to migrant workers

121. In the context of national regulations, the implementation of the standards concerning migrant workers is ensured by an extremely wide range of laws and regulations covering all aspects of the instruments and beyond. While specific aspects of the coincidence of national legislation and the provisions of the instruments will be covered under later chapters of this survey, a few general points bear mentioning at this stage.

---

[25] ILC, *Record of Proceedings*, 32nd Session, Geneva, 1949, pp. 285-287.

122. In their reports, governments make particular reference to two different types of laws and regulations: (a) texts of a general nature, such as labour codes and labour laws applying to nationals and non-nationals alike; and (b) texts more specifically designed with migration as the primary focus. Of these latter policies, a further distinction can be made, between those aiming to regulate migration flows and those aiming to protect migrant workers from exploitation and abuse. The objectives of these two types of policies do not necessarily converge. In countries of employment, regulation of migration flows may entail a drastic reduction in numbers of migrants legitimately entering the country, and increased protection of the migrants who do enter may not be the ultimate consequence. These divergencies, while often not apparent from legal texts, can emerge, if the provisions of the law are not reflected in administrative practice. For this reason, such administrative practices need to be closely monitored.[26]

123. In their reports, governments quote the texts of a general nature chiefly in relation to the provisions concerning equality of opportunity and treatment. Often, countries have a general anti-discrimination provision contained in the Constitution or other basic laws,[27] although in some cases, such as *Antigua and Barbuda*,[28] *Belarus*[29] and *Canada*,[30] the application of such provisions to nationals only is explicitly stated. Beyond constitutional provisions, the scope of labour legislation in principle depends on the existence of a work relationship, that is, it is generally specified that the law applies "to workers" regardless of their nationality, as is the case, for example, in *Jordan*,[31] and *Lithuania*.[32] Where the definition of the term "workers" makes no specific reference to the latter criterion, as is, for example the case in *Egypt* and *Lebanon*, the wording is sufficiently general to cover foreign workers. This is also true of legislation such as that of *Bolivia* and *Norway*, whose scope depends on the establishments covered, as well as, for example in *Croatia*,[33] of legislation on health insurance.

---

[26] See L. Picard: *International labour Conventions and national legislation on migrant workers: Convergence and divergence*, Interdepartmental Project on Migrant Workers (Geneva, ILO, 1996), p. 6.

[27] For instance, the Constitution Act of *Finland* as amended on 17 July 1995 extends to all within the jurisdiction of Finland, all basic rights which were previously restricted on the basis of citizenship, with the exception of voting in national elections. For examples of general anti-discrimination constitutional provisions, see paras. 161-202 of the Committee of Experts' Special Survey on Equality in Employment and Occupation in Respect of Convention No. 111, 1996.

[28] The Constitutional Order of 1981 stipulates in article 14(4)(b) that the general prohibition of discrimination laid down does not apply "with respect to those who are not citizens".

[29] Art. 11 of the Constitution states that "foreign citizens and stateless persons in the territory of Belarus shall have the same rights and freedoms and the same obligations as citizens of Belarus unless otherwise specified by the Constitution, laws and international agreements".

[30] The Constitutional Act of *Canada*, 1982 (79) Schedule B, Part I (Canadian Charter of Rights and Freedoms) illustrates the distinction between provisions applying to citizens only and provisions applying to all within the country — arts. 2, 7, 8 and 9 refer to "everyone" while arts. 3, 6(1) and 6(2), relating to mobility and political rights, refer to "every citizen of Canada".

124. Generally speaking, the scope of national legislation on migration is broader than that envisaged by the instruments. Thus, many laws, such as those of *France*[34] and *India*,[35] lay down the conditions of entry and sojourn of foreigners, irrespective of whether or not they are workers.

125. In this regard, it should be noted that in national legislation the migrant worker falls into several legal categories. First and foremost, the migrant is regarded as a *foreigner* and is subject to immigration legislation. Secondly, as a *migrant worker*, the foreigner may also be subject to special regulations, for example, the right to reside in the country may be dependent upon first holding a work permit. Third, the migrant worker is often, as mentioned above, categorized along with nationals, as a *worker*, in relation to labour law and labour regulations. Fourth, *social security* legislation also tends to be phrased in terms covering both nationals and non-nationals, although often with provisions specifically relating to the position of non-national workers. And finally, as a *resident* in the country, a migrant worker may be subject to rules regarding entitlement to social services and housing.[36]

---

[31] The Labour Code of *Jordan*, Act No. 8 of 1996 defines workers as "any person, male or female performing work against remuneration for an employer and under his direction, including minors, trainees and persons on a trial period". In the report submitted by the Jordanian Government, it was stated that "this definition is absolute and does not discriminate on the basis of sex or nationality [...] thus national and non-national workers enjoy the same rights and receive the same benefits provided by the law".

[32] The Lithuanian Employment Contracts Act states in s. 2 that "labour relations shall be regulated with a view to observing the principle of equal rights irrespective of gender, race, nationality, citizenship, political convictions, etc.".

[33] The Health Insurance Act of *Croatia*, 1997, contains no special provisions for non-national workers, on the understanding that the provisions are broad enough to cover both nationals and non-nationals.

[34] Act No. 98-349 of 11 May 1998 concerning the entry and sojourn of foreigners in France (modifying Ordinance of 2 Nov. 1945).

[35] Foreigners Act, 1946.

[36] This hierarchy of legal provisions relating to migrant workers was one of the findings of the study undertaken by the ILO Interdepartmental Project on Migrant Workers from 1994-95. For complete references see footnote 26 above.

Section IV. Sending and receiving countries

126. The 1949 and 1975 instruments are intended to have as wide a coverage as possible, in order that as many countries as possible may ratify and implement them. For this reason, their provisions are intended to be flexible and applicable not only to receiving countries, but also to sending countries, as well as to third countries or transit countries, in some cases. A number of States which provided information for this survey cited as a reason for non-ratification the fact that they were primarily countries of emigration as opposed to immigration. Several countries, including *Grenada, Mexico* and *Pakistan*,[37] stated that it is the responsibility of migrant-receiving States to implement the instruments. It should be pointed out that the instruments apply both to sending and to receiving countries. Clearly, certain of the provisions specifically relate to the duties of receiving countries to protect workers from abroad, such as articles relating to the reception of migrant workers in the host country and the provision of adequate housing and equality with nationals in relation to working conditions and social security benefits. Other provisions, however, can be applied by the sending country as well, such as those relating to remittances, information provision prior to migration, measures to ensure equality of treatment as regards the content of the employment contract and measures related to the suppression of clandestine migration.

127. Article 1(a) of Convention No. 97 stipulates that all ratifying States must submit information to the Office and other Members on national policies, and on laws and regulations relating to both emigration and immigration. The reports which were submitted indicated that many countries failed to recognize this double applicability of the provisions, and, as was the case with, for example, the *Central African Republic*,[38] *Malawi*[39] and *Sri Lanka*,[40] restricted their responses to legislation and practice relating to either emigration or immigration.

128. Examples of sending countries developing means of participating in the protection of their nationals abroad appear to be various[41] and imaginative. To take two examples, both the *Philippines* and *Sri Lanka* have institutionalized the protection of nationals overseas by ensuring that all contracts for workers leaving the country for employment must be approved by the State, and by verifying that the conditions of work and the contract are sufficient to ensure that the worker is not exploited, as well as monitoring working conditions through the deployment of labour attachés working in offices in major receiving countries.[42]

---

[37] *Pakistan* stated in its report that "at present ratification of the Conventions is not envisaged [...] Pakistan is not manpower importing and therefore ratification would [...] be more applicable in worker importing countries". *Grenada* and *Mexico* provided similar interpretations.

[38] The report from the *Central African Republic* deals exclusively with immigration, and not emigration.

[39] The report from *Malawi* deals only with emigration procedures and the protection of Malawi nationals abroad.

[40] *Sri Lanka* states that immigration measures are not relevant because "there is no inward migration for employment".

[41] For example, the 1970 Constitution of *Guyana* stipulates in art. 31 that "it is the duty of the State to protect the just rights and interests of citizens abroad".

129. Cooperation between sending and receiving countries in the form of both migration policy and in the form of coordination between employment agencies of sending and receiving countries is specifically mentioned in Articles 3(2) and 7 of Convention No. 97. The Model Agreement appended to Recommendation No. 86 indicates the important role of cooperation between sending and receiving States, a role which has, if anything, become more significant since the instruments were drafted.[43] Article 15 of Convention No. 143, stating that "this Convention does not prevent Members from concluding multilateral or bilateral agreements with a view to resolving problems arising from its application", was inserted to counter the claim that some States may consider their obligations fulfilled through such agreements instead of through ratification of the instruments.

* * *

130. In conclusion to this section it can be seen that the scope and nature of the provisions of the instruments under study in this survey have been clarified on many occasions. Despite this, neither Convention has succeeded in achieving significant rates of ratification, and a significant number of reports submitted under articles 19, 22 and 35 of the Constitution demonstrate that many States do not fully understand the scope of the instruments. One of the primary objectives of this survey will be to determine to what extent declining ratification of the Conventions is based upon erroneous interpretations of the instruments' provisions, and to what extent they may remain, for whatever reason, difficult to ratify for a significant number of States.

[42] *Sri Lanka* has labour attachés stationed for this purpose in *Kuwait*, *Lebanon*, *Oman*, *Saudi Arabia*, *Singapore*, and the *United Arab Emirates*.

[43] See overview above (paras. 76 and 77) on the growth of bilateral and multilateral agreements.

CHAPTER 3

THE MIGRATION PROCESS

131. The four instruments provide for migrant workers and their families to be given various guarantees and facilities to assist them in four stages of the migration process: (a) during the recruitment process; (b) prior to departure from the sending country; (c) during the journey to the host country; and (d) upon arrival in the host country. As mentioned above (paragraphs 126-129), both sending and receiving countries have a role to play in ensuring that migrants and members of their families complete the migration process under informed and non-abusive conditions, and the paragraphs below should not, unless otherwise specified, be read as applying exclusively to either sending or receiving countries.

Section I. Recruitment

132. Article 7 of Convention No. 97, Annexes I and II to the same instrument and Paragraphs 1(b), 1(c), 1(d), 13, 14 and 15 of Recommendation No. 86 deal with the recruitment, introduction and placing of migrants for employment. The main purpose of these provisions is threefold: (a) to protect migrant workers; (b) to facilitate the control of recruitment; and (c) to suppress clandestine employment.

A. Definitions

133. Article 2 of Annexes I and II of Convention No. 97 and Paragraph 1 of Recommendation No. 86 distinguish the recruitment, the introduction and the placing of migrant workers. These expressions are defined in identical terms throughout the instruments. To reflect the respective fields of application, Article 2 of Annex II to Convention No. 97 limits its provisions to recruitment, introduction and placing operations which are carried out under "a government-sponsored arrangement for group transfer", while Article 2 of Annex I treats recruitment, introduction and placement operations which are *not* carried out under "a government-sponsored arrangement for group transfer".

134. According to the definition given in Article 2(a) of Annex I to Convention No. 97, "recruitment" is defined as "(i) the engagement of a person in one territory on behalf of an employer in another territory, or (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants".

135. Thus, "recruitment" covers not only *direct* engagement by the employer or his or her representative, but also operations conducted by an intermediary, including public and private recruitment bodies. The definition covers situations where the prospective migrant is offered a definite job and where a recruiter undertakes to find a job for the migrant. The definition also covers operations accompanying the recruitment procedure, in particular, selection operations. Thus, the notion of recruitment is a very broad one.

136. The term "introduction" is defined in Article 2(b) of Annex I to Convention No. 97 as "any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of paragraph (a)".

137. Under Article 2(c) of Annex I to Convention No. 97, the term "placing" is defined as "any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced within the meaning of paragraph (b)".

138. The Recruiting of Indigenous Workers Convention, 1936 (No. 50),[1] adopted 13 years prior to Convention No. 97, does not include this threefold definition of hiring. Rather, it defines "recruitment" broadly in Article 2(a) as "all operations undertaken with the object of obtaining or supplying the labour of persons who do not spontaneously offer their services at the place of employment or at a public emigration or employment office or at an office conducted by an employers' organization and supervised by the competent authority". As has been stated previously by the Committee, legislation which follows the wording of Convention No. 50[2] may be deemed compatible with that given in the relevant provisions of Convention No. 97 and Recommendation No. 86, as long as "this legislation is in effect applicable to recruitment operations conducted by all private employment agencies other than those run by employers' organizations under the supervision of the competent authority".[3]

139. From the information available to the Committee, it appears that national legislation regulating recruitment, introduction and placing operations does not, as was seen above to be the case with the definition of "migrant worker", always define these terms. When it does, legislators sometimes use terms which are different from those given above. On the basis of the available information, however, this discrepancy does not appear to pose major problems in practice.

---

[1] The Convention attracted 32 ratifications and has been shelved.

[2] For example, s. 2 of the *Bahamas'* Recruiting of Workers Act, 1939, Ch. 290, and s. 2 of *Dominica's* Recruiting of Workers Act, 1943, Ch. 117.

[3] 1980 General Survey, para. 157.

B. Documents issued to migrants

140. Article 5 of Annex I and Article 6 of Annex II of Convention No. 97 list the documents which should be issued to migrants prior to their departure from the sending country. The documents which are to be provided to the migrant prior to departure are intended to give him or her adequate information on living and working conditions in the country of employment. These include, primarily, the employment contract (Article 5(1)(a) and (b) of Annex I and Article 6(1)(a) and (b) of Annex II), as well as a written document containing information concerning "general conditions of life and work applicable to him in the territory of immigration" (Article 5(1)(c) of Annex I and Article 6(1)(a) of Annex II) and, when a contract is not issued until arrival in the receiving country, a written document, which can be either specific to the individual or which can address a group of migrants, specifying "the occupational category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him" (Article 5(2) of Annex I and Article 6(2) of Annex II). It should be noted that these provisions are applicable only to States which "maintain a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment" (Article 5(1) of Annex I and Article 6(1) of Annex II). Where no such system of supervision of labour contracts is maintained, as, for example, the *Netherlands* reported, no such obligations exist. The following paragraphs will address these provisions in more detail.

1. The contract[4]

(a) System of supervision of contracts

141. The general labour legislation of a number of migrant-sending countries, including *Belize, Benin, Congo, Egypt, Ghana, Philippines, Portugal, Sri Lanka* and *Viet Nam*, provides for controls on employment contracts. In some cases contracts offered to national workers for employment abroad must be certified by an official of the Ministry of Labour, as is the case in *Colombia, Hong Kong, India, Mauritius, Pakistan* and the *United Kingdom (St. Helena)*. By virtue of such legislation, the employer or his or her representative is required to draw up the employment contract in writing and submit it for approval to the competent authority in the sending country prior to the prospective migrant's departure. Emigration clearance is not given to the worker unless the terms of the contract comply with the relevant provisions of the sending country's legislation. In *Ghana* employers must pay a "capitation fee" to the Chief Labour Officer for each contract with a foreign worker which is attested. One government report, that of *Hong Kong*, indicates that contract supervision applies only to contracts of less than a certain value, or to specific categories of labour which may be deemed particularly vulnerable.[5] Another country, *Ecuador*, indicated that the same system of supervision of contracts exists for nationals and non-nationals alike.

---

[4] Other ILO standards relevant to employment contracts include the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), the Equality of Treatment (Social Security) Convention, 1962 (No. 118), the Holidays with Pay Convention (Revised), 1970 (No. 132), the Maintenance of Social Security Rights Convention, 1982 (No. 157), and the Termination of Employment Convention, 1982 (No. 158).

142. Some migrant-sending countries reported that in countries where a large number of their nationals were employed, various measures were implemented to ensure the continued compliance with the terms of contract agreed to. Two countries, *Pakistan*[6] and *Viet Nam*, reported establishing representative offices of the public employment service, or stationing a labour attaché in such countries to ensure nationals' contracts were respected. *Burkina Faso* reported the establishment of a national commission with a mandate to ensure the application of nationals' contracts in *Gabon*. With particular reference to female migrants, *Sri Lanka*[7] reported that in countries where many Sri Lankan women were employed as domestic workers, their contracts must be registered at the Sri Lankan Embassy in the country of employment. The *Philippines*[8] also reported the establishment of welfare and monitoring centres in countries where women were known to be employed in positions which may render them more vulnerable to abuse and exploitation. The Committee notes with interest the Constitution and other legislation of *Mexico*[9] which stipulates that all contracts between Mexican nationals and foreign employers must be certified by the appropriate municipal authorities, approved by the Conciliation and Arbitration Committee and authorized by the Consulate of the country to which the worker intends to migrate.

143. A few migrant-receiving countries, notably the *Central African Republic*[10] and *New Zealand*,[11] reported legislation providing that foreign workers are not permitted to commence a wage-earning activity in the country unless they are in possession of an employment contract which has been approved by the competent authority in the receiving country. *France* reported that the "Expaconseil" service can give advice, on request, to employers wishing to hire foreign workers as well as to potential emigrants, on the drawing up of contracts and their contents, in particular in relation to social security and remuneration.

---

[5] In *Hong Kong*, only contracts worth less than HK$20,000 per month, and all manual labour contracts must be certified.

[6] Through the Bureau of Emigration and Overseas Employment.

[7] *Sri Lanka* reports monitoring the implementation of female domestic workers' contracts in *Kuwait*, *Lebanon*, *Oman*, *Saudi Arabia*, *Singapore* and the *United Arab Emirates*.

[8] Departmental Order No. 3/3A (1994).

[9] Art. 123, para. XXVI, of the Political Constitution of the United States of Mexico, and ss. 78-80 of the General Population Act.

[10] s. II.37.2 of the Labour Code, requires all contracts for workers recruited abroad to be authorized by the Ministry of Labour.

[11] In *New Zealand*, contracts for foreign workers must be attested by the Immigration Service.

However, from the information made available to the Committee, supervision of migrants' employment contracts appears to be a less common practice in receiving States than in sending ones. In this respect, the Committee considers that, in light of fraudulent practices taking place in the country of employment, such as contract substitution, migrant-receiving countries should take a more active role in supervising the issuance and execution of contracts of employment.

144. Contract substitution is the practice whereby, despite having signed an authorized contract prior to departure, upon arrival in the country of employment, the worker is issued with a new contract specifying lower conditions of work, pay and so on. Such a practice has been known to occur particularly in the Gulf States. In this regard, the Committee notes the specific reference in the report from *India* that emigration clearance is only given to nationals when the Protector General of Emigrants is satisfied that "the worker will be deployed in the same job for which he/she has been recruited".

(b) Date and place of the issue of the contract

145. Article 5(1)(a) of Annex I and Article 6(1)(a) of Annex II of Convention No. 97 stipulate that "a copy of the contract of employment shall be delivered to the migrant before departure or, if the governments concerned so agree, in a reception centre on arrival in the territory of immigration". In this regard, Article 5(2) of Annex I and Article 6(2) of Annex II to Convention No. 97 specify that when the migrant does not receive the employment contract until his or her arrival in the host country, he or she must be informed prior to departure by a written document, of conditions of life and work in the host country. This will be discussed in more detail in paragraphs 155-157 below.

146. The Committee notes with regret that very few governments provided information on this point. A few governments, notably *Belarus, Croatia, Grenada, Mauritius* and *Qatar*, specified that contracts must be issued to migrants prior to their departure from the country. *Israel* and *Qatar* reported that a copy of the employment contract must be deposited with the National Employment Service and the Labour Department, respectively. *Hong Kong* indicated that a copy of a contract certified by the Commissioner for Labour is sent to the competent authorities in the receiving country, and in *Egypt* contracts for Egyptians recruited to work abroad must be deposited with the Ministry of Manpower and Training.

(c) Contents of the contract of employment

147. Article 5(1)(b) of Annex I and Article 6(1)(b) of Annex II to Convention No. 97 provide that the contract of employment should contain "provisions indicating the conditions of work and particularly the remuneration offered to the migrant".

148. From the information made available to the Committee, it appears that most commonly, as is the case in *China,*[12] *Croatia,*[13] *Egypt*[14] and *Viet Nam*[15] for example, contracts for employment abroad must contain information concerning the identity of the parties, indications of the nature of the employment, the date of engagement, the duration and place of employment, the amount and method of payment of the wage, the hours of work, transport costs and the burden of repatriation expenses. One of the most comprehensive obligations which came to the Committee's attention was reported by *Belarus*, and included the above specifications plus information regarding, inter alia, overtime or night work, paid leave, conditions of termination and extension of contract, transport to and from the place of work, catering, housing, medical services (including for family members), social insurance and health services in case of industrial accident.

149. The Committee notes with interest the reports of two governments, *Belarus* and *Israel*, which stated that it is obligatory for employers or recruiters to furnish migrants with employment contracts in either their mother tongue or in a language which they can understand.

150. Workers considering taking up employment in a country which is not their own are often, due to geographical distance as well as to the nature of the occupations they tend to undertake, in a disadvantaged position to determine reasonable terms and conditions of work in the country of employment prior to departure. In this respect, the Committee emphasizes that, in order to ensure that migrants are protected to the greatest possible extent from abuse and exploitation in relation to conditions and terms of employment, contracts of employment should be as complete as possible. In particular, the Committee considers it desirable that contracts should regulate such essential matters as hours of work, weekly rest periods and annual leave, without which the indication of the wage, as required by the annexes to Convention No. 97, may become meaningless. The Committee considers in this respect that certain aspects of wage protection (payment intervals, means of payment, deductions from wages for payment of services rendered by private employment agencies, etc.) could be included in the contract or any other written document issued to the migrant worker. The Committee also emphasizes that particular attention should be paid to provisions in migrant workers' contracts which may be contrary to the ILO's fundamental principles, such as the right to organize, the right to engage in collective bargaining and the right to strike.

---

[12] See for example, *China* where the Draft Regulations Safeguarding the Rights and Interests of Contract Workers Sent Abroad and Persons for Employment Overseas stipulate that emigrants' contracts should contain such details as the conditions of work, occupational health and safety information, labour insurance, treatment in case of industrial accident, occupational disease and death, administrative formalities and so on.

[13] In *Croatia*, s. 12 of the Employment Act (No. 59/96) states that contracts should include reference to the duration of the contract, salary, fees and facilities, and repatriation conditions.

[14] Under the Labour Act (Part 3), s. 28(bis2), contracts should contain details about the "job, the wage determined thereof, the conditions and circumstances of performance thereof, the rights and liabilities of the employee and the legal system which the contract is subject to".

[15] In *Viet Nam* the Labour Code specifies that the number of workers, name of the employer, location of the work and wage must be specified in any labour contract.

(d) Model contracts

151. The Committee notes with interest that in some countries, including for example, *Antigua and Barbuda*,[16] *Bulgaria*, *Croatia*[17] and the *United Republic of Tanzania (Zanzibar)*,[18] migrants' contracts must be drawn up in accordance with a prescribed model, attached to the relevant legislation. The intended purpose of such a model contract is to ensure that migrants who may be unfamiliar with the standards and terms of employment in the host country are guaranteed basic protection from abuse and exploitation.

152. Some governments, such as those of *Hong Kong*,[19] *Sri Lanka*[20] and the *United Republic of Tanzania (Zanzibar)*,[21] report that model contracts are used only in relation to those occupations which may be deemed particularly vulnerable, such as domestic work, manual labour or agricultural work.

153. In a few countries, including the *United Republic of Tanzania (Zanzibar)*,[22] use of the standard contract is mandatory, although in the majority of cases, it serves simply as a model to provide prospective employers and migrants with guidance in formalizing employment agreements.[23] In cases where it is mandatory, the model contract is printed in advance, including basic provisions regarding minimum wages, hours of work and so on, and then personalized with the addition of particulars relating to, for instance, the identity of the contractors, the nature and place of the work and the duration of the contract.

154. A few governments, including *Mauritius* and the *United Republic of Tanzania (Zanzibar)*, submitted copies of such contracts to the Committee. From the information provided, it appears that, as a general rule, these contracts regulate the rights and obligations of the parties in some detail. Most of the

[16] Schedule C of Recruiting of Workers Act, Ch. 151, 1941.

[17] Under s. 12 of the Labour Act (No. 59/96).

[18] Under the Labour (Forms of Contract) Regulations, Ch. 61 of the Laws of the United Republic of Tanzania (Zanzibar).

[19] For example, the *Hong Kong* Foreign Domestic Service of the Labour Department, in cooperation with the Immigration Department provides a standard contract for foreign domestic workers setting out the "major terms of service and welfare benefits".

[20] Model contract is used for domestic workers recruited for employment in *Kuwait, Saudi Arabia* and the *United Arab Emirates*. See annex to the Sri Lankan Bureau of Foreign Employment Regulations, 1985.

[21] One model contract is used for both nationals and non-nationals recruited for the weeding of plantations.

[22] All foreign contracts must comply to Form II of the Labour (Forms of Contract) Regulations, Ch. 61 of the Laws of the United Republic of Tanzania (Zanzibar).

[23] For more details, see Abella, op. cit., pp. 67-70.

standard contracts which the Committee has examined deal with the place and nature of employment, the duration of the contract, the basic wage, regular working hours, overtime pay, paid leave, medical care, repatriation in the event of death of the worker and dispute settlement. Contracts may also contain provisions concerning family reunification, certain social security benefits, travel costs, medical and hospital care and procedure for the termination of the contract.

2. Other documents

155. Convention No. 97 also stipulates that migrant workers should be issued with a number of other documents, in addition to an employment contract, prior to departure, to supplement the information contained in the contract. Article 5(1)(c) of Annex I and Article 6(1)(c) of Annex II to Convention No. 97 provide that migrant workers must receive "in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration".

156. The information provided to the Committee in relation to the provision of such a written information document was, unfortunately, too sparse to allow it to reach general conclusions. The information which was received indicates that legislation in both sending and receiving countries obliging written information documents to be issued to migrants prior to their departure from the host country is rare. A small number of examples are available, however.

157. The Government of *Mauritius* reported that companies seeking to recruit non-nationals for work in the country must sign an agreement with the Government guaranteeing to furnish the worker with a written document covering such matters as accommodation, travel costs, copy of the contract, minimum wage and so on. *Croatia*, reported that its Employment Office is obliged to inform national workers of living and working conditions in the country of employment prior to departure, although it was not specified whether this information takes the form of a written document. The *United Kingdom* reported that migrants recruited through private agents must be given written details of their employment in advance, in a language which they can understand, and employers must receive written details about the worker. The *United States* reported that migrants recruited for agricultural work must be provided with a written document specifying the following information: (a) the place of employment; (b) wage; (c) type of crop and nature of the work; (d) period of employment; (e) transport, housing and so on if these are provided; (f) the existence of any strike or work stoppage;[24] and (g) any agreements between the employer and other establishments in the locality providing goods or services to the migrant workers relating to any commission or benefit to the employer. While few other countries indicated such provisions, paragraphs 191-213 below, concerning migration information and assistance services, examine other means of ensuring that migrants are in possession of information on living and working conditions in the country of employment prior to their departure.

---

[24] It appears that this phrase, taken from the *United States* report, is intended to prevent employers from recruiting migrants to replace striking employees.

3. Supervision and sanctions

158. Article 5(3) of Annex I and Article 6(3) of Annex II to Convention No. 97 provide that the competent authority should take the necessary measures to ensure that "the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof". Looking at current trends in clandestine migration and illegal employment, it appears that those particularly likely to violate contract regulations are not only employers and their intermediaries who are involved in illicit or clandestine movement of migrants, but also migrants themselves.[25] The possibility that violations are also committed by state officials, however, should not be excluded.

159. As with many aspects of the recruitment, introduction and placement of migrants, the information provided to the Committee was insufficient to generate a reliable picture of how governments deal with violations of legislation governing employment contracts. The information available suggests that the legislation which provides for a system of supervision of labour contracts prior to the departure of the migrant worker also tends to contain provisions designed to ensure its application. As stated above, in certain migrant-sending countries the law specifies that the authorities must refuse migrant workers, who do not have a duly certified employment contract, permission to leave the country. In other countries, for example, *Dominica*,[26] the principle of "carrier's responsibility" holds transport companies responsible for ensuring that emigrants are in possession of officially approved contracts.

160. As with many other aspects of the migration process, cooperation between migrant-sending and migrant-receiving countries may prove the most effective way of ensuring that migrants are recruited under non-abusive and non-exploitative conditions. Agreement between the sending and receiving country upon a standard contract containing basic provisions to govern the recruitment of migrants from one country to the other may be the most effective way of protecting migrant workers. The Committee notes with interest that a number of sending and receiving countries have established bilateral or multilateral agreements to regulate the recruitment of workers and to ensure the protection of workers recruited under their auspices. To take two examples on this subject, the flow of workers from *Nicaragua* to *Costa Rica* is governed by the "Labour Migration Agreement, 1993"[27] which ensures that the Costa Rican authorities transmit job offers to the Costa Rican Consulate in *Nicaragua*, which then follows this up with the Nicaraguan Ministry of Labour. According to regulations in *Sri Lanka*, the Government of *India* is authorized to appoint an agent for the purpose of safeguarding the interests of Indian immigrant labourers in *Sri Lanka*.[28]

---

[25] For more information on irregular migration and trafficking, see paras. 289-364 below.

[26] Under ss. 13 and 14 of the Recruiting of Workers Act, 1943, Ch. 117.

[27] This Agreement and its Addendum (1995) apply to the following sectors: agriculture, construction, domestic work and any other activities which the Ministry of Labour of *Costa Rica* designates.

C. Recruitment machinery

161. Article 3(2) of Annex I and Article 3(2) of Annex II to Convention No. 97 stipulate that the right to engage in recruitment, introduction and placing activities are to be restricted to "(a) public employment offices or other public bodies of the territory in which the operations take place; (b) public bodies of a territory other than that in which the operations take place which are authorized to operate in that territory by agreement between the governments concerned; (c) any body established in accordance with the terms of an international instrument".

162. Article 3(3) of Annex I to Convention No. 97 states:

> 3. In so far as national laws and regulations or a bilateral agreement permit, the operations of recruitment, introduction and placing may be undertaken by —
>
> (a) the prospective employer or a person in his service acting on his behalf, subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority;
>
> (b) a private agency, if given prior authorization so to do by the competent authority of the territory where the said operations are to take place, in such cases and under such conditions as may be prescribed by —
>
> (i) the laws and regulations of that territory, or
>
> (ii) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.

163. Articles 3 and 4 of Annex II to Convention No. 97 reaffirm these provisions. Thus, hiring activities can be undertaken either by official recruitment bodies, or by other bodies or individuals authorized to do so by the State.

1. Official recruitment bodies

164. The majority of recruitment for employment abroad was once undertaken by official recruitment bodies, often in the form of government-sponsored group transfer.[29] In recent years, however, the increasing role of private recruitment agencies has had the effect of "commercializing" recruitment for foreign employment,[30] and far fewer migrants than before are being recruited through government channels.[31] However, in a number of sending countries, such as the *Central African Republic*,[32] the recruitment of workers remains exclusively the responsibility of the public employment services. In some countries such as *Cameroon, Croatia, Luxembourg* and *Venezuela* the public employment service is the only body permitted to recruit foreign workers, and in others, for example, *Slovenia*,[33] the public employment service is the only service permitted to recruit workers for employment abroad. In yet others, such as the *Czech Republic*, public employment services are the only recruitment bodies permitted to deal with any form of migration for employment.

---

[28] Indian Immigrant Labour Ordinance of *Sri Lanka*, 1980.

[29] Such as, for example, the government-sponsored arrangements operating between some Caribbean islands (for example *Antigua and Barbuda, Barbados, Jamaica*, etc.) and the *United States* and *Canada*.

[30] For more details on the rise of private recruitment agencies, see *Protecting the most vulnerable of today's workers*, op. cit., paras. 101-124.

[31] For example, "in Bangladesh a government agency, the Bureau of Manpower, Employment and Training, used to place most Bangladeshi workers who left to work abroad (87 per cent in

165. It should be noted that the majority of public authorities, such as those in *Guyana, Netherlands* and the *Syrian Arab Republic*, provide services to the general public, nationals and permanently resident non-nationals alike, rather than focusing specifically or exclusively upon migrant workers alone.[34] The Committee notes, however, that *Japan* indicated the provision of both general services (Public Employment Security Offices) and specific services (Employment and Service Centre for Foreigners).

Box 3.1

EURES

A number of European countries cited the European Employment Services (EURES) as the primary means of recruiting non-national workers and of coordinating regional recruitment policies. EURES is a European labour market network aimed at facilitating the mobility of workers in the European Economic Area (EEA). It brings together the European Commission and the Public Employment Services of the countries belonging to the EEA. EURES operates through more than 450 EURO Advisers stationed throughout *Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden* and the *United Kingdom*.

The objectives of EURES are to provide information, counselling and assistance in relation to placement and recruitment to nationals of EEA countries. Potential migrants and interested employers are provided with information on living and working conditions, legislation, administrative formalities, advice on how to find a job and access to the public employment services of other EEA countries. EURES has established two databases, the first dealing with job vacancies for EEA nationals, and the second containing general information on living and working conditions in EEA countries. EURES also provides a service to ensure the comparability of qualifications within the EEA.

Note: Further information on EURES can be found on the Internet.

1976). By 1982, however, it only accounted for 20 per cent and eight years later for only 7 per cent", *Protecting the most vulnerable of today's workers*, op. cit., para. 105.

[32] Under s. 176 of the Labour Code, Act No. 61/221.

[33] Under the Act on Protection of Workers Temporarily Employed Abroad (1980), private recruitment agencies are not permitted to recruit Slovene citizens for employment abroad.

[34] One exception is the Pakistan Overseas Employment Corporation, which provides information specifically to nationals intending to migrate.

(a) *Bilateral and multilateral agreements*

166. In this regard, the Committee notes the reports of a number of major migrant-receiving countries which indicate that, outside regional agreements, recruitment of foreign workers is no longer common practice. For example, *Germany* reported that it is no longer able to report on the provisions of Annexes I and II because recruitment of migrant workers ceased in 1973 and it has terminated recruitment agreements with *Greece, Italy, Republic of Korea, Morocco, Portugal, Spain, Tunisia, Turkey* and *Yugoslavia.*[*] The *Netherlands* reported that, despite the existence of bilateral recruitment agreements with a number of countries including *Morocco, Portugal, Spain, Tunisia, Turkey* and *Yugoslavia,*[*] no labour has been recruited on a large scale from these countries since the 1980s. *France* reported recruitment agreements existing with *Austria, Finland, Norway* and *Sweden*, as well as a framework agreement with *Canada (Province of Quebec)*. *Venezuela* indicated that while no cooperation agreements existed governing relations between the national employment service and corresponding services in other countries, there was an obligation to do so should the need arise. *Japan* indicated to the Committee that, to date, no cooperation has taken place with employment placement facilities and other related bodies in other member States of the ILO.

(b) *Free services*

167. Article 7(2) of Convention No. 97, Article 4 of Annex I and Article 4(1) of Annex II, provide that the services rendered by public employment services in connection with the recruitment, introduction or placing of migrants for employment are to be provided free of charge. While the legislation of most countries appears to comply with this provision,[35] according to the information made available to the Committee, this appears to have raised problems in practice for a number of countries, some of which, such as *Albania* and *Dominica,*[36] charge fees. In the case of *Pakistan,* workers recruited for employment abroad must deposit a fixed fee, which partially finances the Welfare Fund (a fund to provide assistance to nationals abroad) and partially represents a fee for recruitment.[37] In *Indonesia,* workers recruited for employment abroad must cover the costs of recruitment, which can be collected through monthly instalments

[*] That is, the ex-Socialist Federal Republic of Yugoslavia.

[35] For example, *Antigua and Barbuda, Bahamas, Central African Republic, Czech Republic, Finland, Germany, Grenada* (but only to government-sponsored emigrants), *Guyana, Israel, Malawi, Mali, Mauritius, Mexico, Netherlands, Trinidad and Tobago, Turkey* and *Zambia.*

[36] s. 13 of the Act on Employment of Albanian Citizens Outside the Territory of Albania, 03/10/91, states that: "the costs of preparing and sending the necessary documentation are to be covered by the person who wishes to be employed abroad, according to a tariff fixed by the Labour and Social Assistance Committee, under the supervision of the Ministry of Finance". *Dominica* claims that an employment service for migrants is maintained but that "this is not entirely free".

[37] Emigration Act, 1979.

taken from his or her future wages.[38] Two countries, *Sri Lanka* and *Viet Nam*, stated in their reports that the provision of free employment services to non-nationals constituted a major barrier to ratification of the Convention. *India* reported that while fees are charged to potential emigrants, the Government is exploring the possibility of meeting the requirements of Article 2 of the Convention. Other countries, including *Antigua and Barbuda, Australia* and *Canada*,[39] while charging for employment services for non-nationals, claim in their reports that this was in accordance with the provisions of the Convention, as the fees charged cover any eventual administrative costs relating to processing visa applications and do not constitute a charge for employment information as such. The *Syrian Arab Republic* reported that the fees it charges workers for services are merely "symbolic".

168. In this regard, the Committee points out that Article 4(2) of Annex II to Convention No. 97 states: "The administrative costs of recruitment, introduction and placing shall not be borne by the migrants [...] although no definition of 'administrative costs' is given". In this regard, the Government of *Sri Lanka* in 1993 asked the Office for an informal opinion[40] as to whether the fact that the Sri Lankan Bureau of Foreign Employment makes prospective migrants pay a tax which is designed to cover certain costs (medical examinations, insurance, vocational training, information and other social services) can be considered as contravening the principles of the Convention. The Office responded that: (a) on the one hand, it was possible that an institute whose sole mandate was to deal with questions relating to emigration for employment, was not a public employment service, and that therefore the Sri Lankan Bureau of Foreign Employment was not included in the scope of the Convention; (b) on the other hand, Article 2 of the Convention stipulates that a free service "to assist migrant workers" must be ensured, without specifying whether this service is to be provided by the public employment service, or another service. Article 2 refers, in particular, to the provision of reliable information, as an example of the type of service which should be provided free to migrant workers. According to the Government's letter, the charges made by the Sri Lankan Bureau of Foreign Employment covered, inter alia, the "provision of information"; (c) in consequence, the ILO concluded that the charges foreseen by the Sri Lankan Bureau of Foreign Employment "appear to be incompatible with Article 2 of the Convention".

---

[38] Implementation Directive for the Recruitment of Workers Domestically and Overseas (No. KEP.44/MEN/1994).

[39] *Antigua and Barbuda*, under s. 9 of the Work Permits Act, 1971, charges fees for processing of work permit applications. *Canada* charges fees to temporary workers to cover "the cost of processing their applications for employment authorizations". The Government states: "This is not related to a public employment service to migrant workers and is therefore not in contradiction with Art. 7 of C. 97".

[40] Governments which are in doubt as to the meaning of particular provisions of an ILO Convention or Recommendation may request the Office to express an informal opinion. The Office, always with the reservation that it has no special authority under the Constitution to interpret Conventions and Recommendations, has assisted governments when asked for its opinion. In practice, the Office endeavours to assist employers' and workers' organizations similarly. Where the request is for a formal or official opinion or the issue raised is likely to be of general interest, a *Memorandum by the International Labour Office* will be published in the *Official Bulletin*, containing the Office's opinion. A simple letter of reply will normally be sent by the Office in cases where a formal or official opinion is not specifically requested.

169. Although it is clear that a more recent instrument cannot be used to interpret the original meaning of Convention No. 97, an examination of more recent instruments of the ILO containing provisions relating to "administrative costs" of recruitment, introduction and placement of workers, may give an idea of the ways in which the Organization has addressed this question. Article 4 of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179) stipulates that: "A Member shall, by means of national laws or applicable regulations: (a) ensure that no fees or other charges for recruitment or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer; for this purpose, costs of the national statutory medical examination, certificates, a personal travel document and the national seafarer's book shall not be deemed to be 'fees or other charges for recruitment'." The Private Recruitment Agencies Convention, 1997 (No. 181), which was recently adopted, reaffirms this principle in Article 7 according to which "private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers [with certain] exceptions [...] in respect of certain categories of workers, as well as specified types of services provided by private employment agencies".

170. It appears that the principle of the free provision of services could be re-examined in light of the Articles 4 and 7 mentioned above.[41] Charging workers for purely administrative costs of recruitment, introduction and placement remains, however, forbidden for both public and private recruitment agencies under Convention No. 97. From the reports submitted to the Committee, it appears that compliance with this provision may constitute an obstacle to ratification of the Convention. In this regard, the Committee notes with interest the report of *Switzerland* which indicates that the public employment service is free for regular-entry migrant workers who already have permission to work in the country, but charges administrative fees to employers inquiring about recruiting foreign labour. The employers are not permitted to demand reimbursement for these fees from recruited workers. Such a situation would appear to be in conformity with the provisions of Annex II to Convention No. 97 and is one way to ensure that public recruitment bodies can continue to operate for profit.

2. Private recruitment and placement bodies

171. As mentioned above, private recruitment for employment abroad has become a lucrative industry in many countries since the 1980 General Survey was conducted. From the information available to the Committee it appears that most countries attempt to regulate the activities of private recruitment agencies in one way or another, although the information provided was, unfortunately, not always sufficient to render a detailed description of how they are regulated.

---

[41] See para. 649 below.

172. Direct recruitment by the employer or by his or her representative, or by private agencies, is authorized under Article 3 of Annex I and Article 3 of Annex II to Convention No. 97, in so far as national laws and regulations or bilateral or multilateral arrangements permit. However, given the wide scope for abuse by intermediaries of prospective migrants during the recruitment procedure,[42] these provisions require that the right to engage in the operations of recruitment, introduction and placement shall be subject to the approval and supervision of the competent authority. In this connection, Article 3(3)(a) of Annex I makes a distinction between recruitment by the employer or his or her representative, which may be authorized "subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority", and the activities of private agencies, which must obtain prior authorization from the "competent authority of the territory where the said operations are to take place". Operations conducted by private agencies must also be subject to the supervision of the competent authority of that territory (Article 3(4)). The provisions of Annex II as well as Paragraph 14(3) of Recommendation No. 86, although worded somewhat differently, have a similar aim.

173. The provisions of Annexes I and II respecting recruitment by private bodies were conceived in the same spirit as those of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), which specifies that fee-charging employment agencies must obtain authorization to place or recruit workers abroad. Convention No. 96 was revised in 1997 in light of the growth and changing nature of private recruitment agencies. The Preamble to the Private Recruitment Agencies Convention, 1997 (No. 181), indicates that it was adopted "considering the very different environment in which private employment agencies operate, when compared to the conditions prevailing when [Convention No. 96] was adopted, and recognizing the role which private employment agencies may play in a well-functioning labour market, and recalling the need to protect workers against abuses".

174. One country, *Morocco*, reported that, while currently no regulation of private recruitment agencies exists, as the Government is considering ratification of Convention No. 181, it feels that this will ensure that the appropriate modifications will be undertaken. It should be noted that, contrary to Convention No. 181, the provisions of Annexes I and II to Convention No. 97 apply not only to fee-charging employment agencies but also to private bodies whose operations are conducted free of charge, such as, for example, non-governmental organizations. Another country, *Egypt*, reported that it was strongly in favour of permitting the activities of fee-charging agencies, and *Viet Nam* reported that recruitment agencies are allowed to charge a fee to cover their costs, which the Government considers an obstacle to ratification. In *Turkey*, the Confederation of Employers' Associations stated that the provisions of the Turkish Labour Act outlawing the activities of private recruitment agencies "no longer meets present-day labour market conditions and needs".

---

[42] *Protecting the most vulnerable of today's workers*, op. cit., paras. 110-124.

175. Some governments, including those of *Antigua and Barbuda*,[43] the *Central African Republic*, and the *Falkland Islands (Malvinas)*, report that no private recruitment agencies exist, while others, such as *San Marino*, report they have completely outlawed private recruitment agencies. In many cases, including *Finland, Germany, Greece, Netherlands, Norway* and *Turkey*, such activities are prohibited if they are remunerated. One country, the *Syrian Arab Republic*, outlaws private recruitment agencies other than those established under the auspices of reciprocal agreements. Yet other countries, including *Barbados* and *Bulgaria*, reported that no legal provisions were in place to regulate the activities of private recruitment agencies. Many countries, however, report a variety of means to encourage the activities of legitimate private recruitment agencies, while protecting workers from potential abuses. These measures can roughly be divided into those taken prior to commencement of the recruitment activities, and those taken to ensure subsequent compliance with the law.

(a) A priori measures

(i) Licensing

176. In most countries which provided information on this subject, including the *Bahamas, Bahrain, Côte d'Ivoire, Czech Republic, India, Mauritius, Netherlands, Norway, Qatar* and *Sri Lanka*, special regulations have been adopted under which any person or body recruiting workers for employment abroad must obtain a licence. A similar obligation is sometimes provided for under general labour legislation, either in connection with the recruitment of national workers for employment abroad, as is the case in *Pakistan*,[44] or for the introduction of foreign workers into the country and their placement, as is the case in *Israel*.[45]

177. Two countries, *Cyprus* and *New Zealand*, reported that systems of accreditation for private recruitment agencies were in the process of being established. In the latter case accreditation would not be mandatory, but would mean that requests for work permits from non-accredited recruitment bodies would "not be given the same weight as claims backed by an accredited government agent".[46] Another country, *Jordan*, reported that draft regulations on the supervision of private recruitment agencies are currently being prepared.

---

[43] *Antigua and Barbuda* stated that no private recruitment bodies exist and that it outlaws fee-charging recruitment agencies under s. 5 of the Recruiting of Workers Regulations (Ch. 151 of the Revised Laws of Antigua, 1921).

[44] For example, in *Pakistan* they are called "Overseas Employment Promoters".

[45] Under ss. 63(a) and 65 of the Employment Services Act, 1959.

178. The Committee remarked in its last General Survey on migrant workers[47] that when private bodies, particularly employment agencies, conduct their activities at the national or international levels, it appears to be important, if the provisions of Annexes I and II respecting recruitment are to be effectively applied, that the authorization granted to private recruitment agencies operating exclusively within the country be distinct from that granted to those intending to recruit either non-national workers for employment inside the country, or national workers for employment abroad. The difficulties facing migrant workers appear to be sufficiently distinct to merit separate attention. This appears to be the case in most countries which provided information on this subject, such as the *Czech Republic*[48] and *Israel*.[49]

179. In principle, authorization tends to be issued to recruiting bodies for a certain period. In some countries, such as the *Bahamas*,[50] *Bahrain, Dominica, Mozambique, Saudi Arabia* and *Sri Lanka*, licences must be renewed on a yearly basis; in others such as *Mauritius*, renewal is biennial, while in others, including *Belarus* and *Egypt*, the renewal period is every five years. More rarely, licences are granted for a quota of workers specified in advance.[51] Generally speaking, authorizations for such activities are granted to private bodies only after the applicants have supplied certain information relating to their persons and activities. In addition, certain conditions must also be fulfilled by the applicant, such as good morals, no police record, enjoyment of civic rights, and solvency.[52] One country, *Sri Lanka*, reported that the Government must be convinced that the agency applying for a licence "is capable of carrying on the business in an irreproachable manner". The *Netherlands* reported that in order to obtain a "mediation permit" recruitment agencies must have: (a) a sound business plan; (b) a list of rates for employers which is published in advance; and (c) a guarantee that workers will not pay fees. Information submitted by *New Zealand* stated that under the newly proposed scheme, accredited agents would have to demonstrate a good knowledge of *New Zealand* combined with a strong commitment to the country. In the *Bahamas*, licences are only granted when the licensing officer is "satisfied that adequate provision has been made for safeguarding the health and welfare of the workers to be recruited", and in *Belarus* licences may be revoked for violating legislation or for "life-threatening actions and actions which may be detrimental to people's health or may have other serious consequences".[53] In *Belize*, applicants for licences "shall be subject to the general condition that no force, coercion or misrepresentation of any kind shall be used in inducing a prospective worker to accept employment and that no payment in money or in kind or promises of such payment shall be made by the licensee to the worker as an inducement to accept employment".[54]

---

[46] Quote taken from a press release issued by the Immigration Minister in June 1990. It was also postulated that accredited agents would be permitted to display an official logo in their premises.

[47] Para. 171.

[48] s. 11 of Act No. 9/1991 on Employment and the Activity of Bodies in the Sphere of Employment.

[49] Of 202 private recruitment agencies licensed to operate in *Israel*, only 42 have specific authorization to bring non-national workers into the country. See s. 65 of the Employment Services Act, 1959.

[50] s. 4(4) of the Recruiting of Workers Act, 1939, Ch. 290 of the Laws of the Bahamas. It has been argued that issuing licences for as short periods as one year only serves to discourage investment, and that a more flexible system would provide revokable licences for indefinite time periods. See Abella, op. cit., p. 78.

[51] For example in *Norway* employers can apply for a collective work permit to recruit a fixed number of non-nationals according to s. 26 of the Regulations concerning the Entry of Foreign Nationals into the Kingdom of Norway and their presence in the Realm.

[52] See, for example, s. 4(2) of the *Bahamas* Recruiting of Workers Act, 1939 (Ch. 290); and *Dominica*, s. 3(2) of the Recruiting of Workers Act, 1943 (Ch. 117).

(ii) Financial guarantees

180. In a number of cases, beyond application for a licence to operate, recruitment agencies may be required to deposit a financial security as a guarantee that they will fulfil their obligations.[55] In the *Philippines*, for example, foreign employers and promoters offering contracts to Filipino women as performing artistes are required to deposit the equivalent of US$20,000 with the competent authorities. In *Egypt*, the deposit amounts to 50,000 Egyptian pounds and in *Mauritius*,[56] the prescribed financial deposits can be paid either in cash, in the form of an insurance policy, or as a bank guarantee. In *Thailand*, agencies are required to deposit 100,000 baht for a licence to recruit workers for employment in the country and 5 million baht to recruit workers for employment abroad,[57] and in *Indonesia* private recruitment agencies must deposit 375 million rupiahs to obtain a licence.

(iii) Regulation of fees charged

181. It was mentioned above that under Convention No. 97, public recruitment activities must be provided free of charge and under Convention No. 181 both public and private employment services should be provided to workers free of charge. Private activities are not explicitly governed by the obligation in Convention No. 97, although, as stated above in paragraph 168,

---

[53] Quotation taken from the report submitted by *Belarus*.

[54] s. 4(i) of the Labour (Recruiting of Workers) Regulations, No. 70, 1963.

[55] It has been argued, however, that obliging licencees to submit a financial guarantee to the State rather than ensuring that recruitment is conducted under legitimate and non-abusive conditions, rather puts those agencies which do apply for a licence at a competitive disadvantage and encourages the practice of illegal recruitment which is thus cheaper. See Abella, op. cit., p. 79.

[56] s. 3 of the Recruiting of Workers Act, 1993 (No. 39).

[57] Ministerial Regulation No. 8 of 1993 issued under the Employment Agencies and Employment Seekers' Protection Act, 1985.

Article 4(2) of Annex II states that "the administrative costs of recruitment, introduction and placing shall not be borne by the migrants", an obligation binding on both public and private bodies.

182. While some States which provided information to the Committee have not outlawed fee-charging recruitment agencies, they have chosen to regulate the amount which private recruiters can charge for their services. For example, *Egypt*,[58] set a maximum placement fee which is either a set one-off payment or a given percentage of the contract salary. In a number of cases, including the *Czech Republic, Israel* and *Switzerland*, the maximum amount of the fees which may be charged by private agencies is regulated. The *United Kingdom* reported that, except in a few "limited and prescribed circumstances", private services are provided free to workers.

183. The Committee notes that the Articles relating to the regulation of private recruitment agencies contained in Convention No. 97 and Annexes I and II appear to have caused a certain amount of confusion in member States. From the information which has been submitted, as well as from the Committee's knowledge of recruitment practices in many regions of the world, it appears common practice in many regions that private recruitment agencies charge prospective migrants for recruitment services. Moreover, migrants are often willing to pay high fees for recruitment even in countries where such practices are outlawed. The Committee considers that, given the changing nature of private recruitment since the adoption of the instruments, and the high probability for exploitation of workers willing to pay fees in any case, the provisions of the instruments would benefit from being more explicit on this point.

(b) A posteriori measures

(i) Labour inspections

184. Although government reports are not very explicit on this point, it appears that the legislation of most countries provides for supervision by the public authorities of the activities of private agencies which are authorized to engage in the recruitment of national workers for employment abroad or the introduction and placement of foreign workers. The most common means of ensuring recruitment agencies' compliance with the law is through labour inspectorates, as is the case in, for example, *Albania, Angola, Burkina Faso, Colombia, Netherlands, Papua New Guinea, Portugal* and the *United Kingdom*. One country, *Jamaica*, reported that labour inspections of all private recruitment agencies take place on a quarterly basis.

---

[58] For example, under *Egypt's* Labour Act (Part 3), s. 28(bis3), "the company may collect an amount of not more than 1 per cent of the wage of the employee who obtains employment abroad through the company, only for the first year as administrative expenses and no further amounts shall be collected".

(ii) Sanctions

185. The sanctions which are entailed by non-compliance with the law vary across countries. In the *Bahamas*,[59] *Israel*,[60] *Mali*,[61] *Qatar*[62] and the *United Kingdom*,[63] a fine is imposed, and in others, such as *Greece*,[64] and *Pakistan*,[65] imprisonment is also possible. *Norway* reported that penalties of up to two years' imprisonment and a fine can be imposed upon anyone who "for the purposes of gain, conducts organized activity with a view to assisting foreign nationals to enter the Realm in return for payment".[66] It is to be noted that, one country, *Turkey*, reported that the sanctions for recruiting nationals for employment outside the country were more severe than those for recruiting non-nationals for employment in the country. In most countries with a licensing system in place, such as the *United Kingdom*,[67] organizations and individuals can be banned from recruitment operations for a period of time. The Committee notes with interest the report of *Israel* which indicates that, in cases where a violation is committed by a private recruitment agency, the actual employer who employed the migrant shall also be charged with violation unless "he proves that the violation was done without his knowledge and that he used all reasonable means to prevent it".[68]

(iii) Record-keeping

186. In order to facilitate supervision of the activities of private bodies, the legislation in some countries, for example *Egypt*,[69] provides for the submission of periodic reports on activities to the competent authority. Others, including *Mali*, oblige recruiters to keep registers. One country, *Mauritius*, requires statistical information on recruitment activities to be submitted to the competent authorities every four months, while another, *Mozambique*, demands detailed data be submitted for every recruited worker on a monthly basis. In *Belarus* all employers and recruiters are obliged to register their contracts with non-nationals with local migration bodies, and in *Australia* "migration agents" or private recruitment agencies are obliged to keep records of their activities which must be made available on request to the Migration Agents' Registration Board.

---

[59] Up to $400.

[60] Up to 15,000 New Shekels.

[61] 10,000-50,000 francs CFA.

[62] 6,000 riyals.

[63] £5,000.

[64] s. 26 of Act No. 1346, 1983, and Act No. 1975, 1991.

[65] Imprisonment of up to 14 years is possible.

[66] s. 47(d) of the Immigration Act (1988).

[67] Organizations and individuals violating recruitment regulations can be banned from operating for a period of up to ten years.

[68] s. 4 of the Foreign Workers (Unlawful Employment) Law, 1995.

[69] Under Act No. 10/1991, employment agencies are obliged to submit biannual reports on their activities.

(iv) Self-regulation

187. In light of the guidelines adopted by the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration in 1997 (see box 3.2 below), the Committee would have welcomed information regarding self-regulation of recruitment agencies, in the form of the adoption of non-binding codes of conduct or monitoring the activities of private recruitment agents by their own members. However, no governments or workers' or employers' organizations submitted information which would have permitted the Committee to determine whether or not self-regulation is a widely used means of regulating recruitment activities.

Box 3.2

Self-regulation by private agents

Migrant-sending as well as migrant-receiving countries should encourage the self-regulation by private agents of their profession. Self-regulation should include the adoption by private agents of a code of practice to cover, inter alia, the following:

(a) minimum standards for the professionalization of the services of private agencies, including specifications regarding minimum qualifications of their personnel and managers;
(b) the full and unambiguous disclosure of all charges and terms of business to clients;
(c) the principle that private agents must obtain from the employer before advertising positions and in as much detail as possible, all information pertaining to the job, including specific functions and responsibilities, wages, salaries and other benefits, working conditions, travel and accommodation arrangements;
(d) the principle that private agents should not knowingly recruit workers for jobs involving undue hazards or risks or where they may be subjected to abuse or discriminatory treatment of any kind;
(e) the principle that migrant workers are informed, as far as possible in their mother tongue or in a language with which they are familiar, of the terms and conditions of employment;
(f) refraining from bidding down wages of migrant workers; and
(g) maintaining a register of all migrants recruited or placed through them, to be available for inspection by the competent authority, provided that information so obtained is limited to matters directly concerned with recruitment and that in all instances the privacy of the workers and their families is respected.

Source: Extract from the *Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration*, op. cit., p. 17.

3. Direct recruitment by the employer

188. It should be recalled here that, although the provisions of Annexes I and II regarding direct recruitment by employers do not require the employer to obtain previous authorization before commencing such operations, they are nevertheless subject, if necessary in the interests of the migrant, to the approval and supervision of the competent authority (Article 3, paragraph 3(a), of Annex I and Article 3, paragraph 3(a), of Annex II) in the sending country. These provisions, as with Paragraphs 13 and 14 of Recommendation No. 86, assimilate operations undertaken by persons "in the service of the prospective employer and acting on his behalf" to operations undertaken by the employer himself.

189. In relation to direct recruitment practices, the Committee regrets that few governments[70] have supplied information on the measures taken to secure the observance of their recruitment legislation in this respect. One country, *Luxembourg*, reported that employers or employers' organizations can, under certain strict conditions, recruit directly from abroad; and in *Bulgaria*, employers need to acquire government authorization to do so. In *Qatar*, employers are permitted, subject to special permission from the Ministry of Labour, Social Affairs and Housing, to import migrant labour to meet their own needs.[71] Given limited information, the Committee is in no position to assess the practical effect given to these provisions. It reiterates its statement in the 1980 General Survey on this point, that the absence of information is the more regrettable in that many suppliers of clandestine labour carry on their activities in contravention of the law regarding recruitment.

Section II. Prior to departure

190. In order that prospective migrants are able to make a well-founded decision on whether or not to leave their home countries, they should have access to reliable and unbiased information on the formalities which must be completed, as well on the conditions of life and work which await them.

A. Migration information and assistance services

191. Article 2 of Convention No. 97 stipulates that: "Each Member [...] undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information." Annexes I and II of Convention No. 97, as well as

---

[70] The *Czech Republic* stated that it currently is following a policy whereby the activities of private recruitment bodies are highly restricted, and that direct recruitment by the employer is being encouraged. *Turkey* stated in its report that Turkish employers can seek manpower abroad, subject to obtaining permission and on the condition that no fees are charged for any recruitment services.

[71] Act No. 14, 1992, to regulate the operation of labour-importing agencies.

Recommendation No. 86, specify more precisely what this entails in practical terms.

192. Although most governments which have supplied information on the matter confine themselves to confirming the existence of a service to provide information to emigrants and immigrants, some reports give a more complete picture of the range of activities of the information services, along the lines of Part III of Recommendation No. 86 and the annexes to Convention No. 97. Some major migrant-receiving countries, including *Australia, Finland, New Zealand* and *Sweden*, provided examples of information leaflets and promotional documents published by their services, which the Committee notes with interest. *Switzerland* reported that it publishes brochures on working and living conditions in approximately 100 different countries for Swiss nationals intending to emigrate.[72]

193. Paragraph 5(2) of Recommendation No. 86 stipulates that information services should "advise migrants and their families, in their languages or dialects or at least in a language which they can understand, on matters relating to emigration, immigration, employment and living conditions, including health conditions in the place of destination, return to the country of origin or of emigration, and generally speaking any other question which may be of interest to them in their capacity as migrants". Paragraph 7(1)(a) of Recommendation No. 151 specifies more clearly what subject-matters may be of interest to migrants, recommending Members to inform migrants of matters covered in Paragraph 2 of Recommendation No. 151, including vocational guidance and training, placement services, conditions of work, social security measures, welfare facilities, trade union membership, conditions of life, including housing, education and health facilities.

194. Regarding the languages in which information is provided, only a few governments, including those of *Australia* and *Hong Kong*, indicated that they provided information to prospective migrants in the languages of the most prominent migrant-sending countries. *Argentina* reported that information was disseminated to migrants through agreement with the Catholic Committee on Immigration, Caritas Argentina and the International Committee on Migration, which uses translators where necessary. *Japan* reported that the Government publishes information on working in Japan in Chinese, English, Hangul (Korean alphabet), Portuguese, Spanish and Tagalog, and the Immigration Bureau of the Ministry of Justice prepares guides on immigration procedure in standard Chinese, English, Korean, Taiwanese dialect and Thai.

195. Regarding the substance of the information, the range of topics covered by national information services appears to be very wide in those countries which provided it, ranging from general information on immigration law, as provided by *Australia*, to information such as that provided in *Finland* and

---

[72] The Government reported that these brochures are in high demand and over 29,000 requests were made in 1997.

New Zealand[73] covering, inter alia, social and health services, day-care facilities, housing, taxes and dental care.

196. Paragraph 5(3) of Recommendation No. 86 specifies that "The service should provide facilities for migrants and their families with regard to the fulfilment of administrative formalities and other steps to be taken in connection with the return of the migrants to the country of origin or of emigration, should the case arise". Two major migrant-sending countries, *Algeria* and *Pakistan*, reported that the primary focus of their information provision was to return migrants, in an attempt to help them reintegrate into their home country. Of other sending countries, *Chile* reported activities to assist return migrants with financial aid, professional training and so on, and in 1990 a National Foundation for the Reception and Settlement of Repatriated Greeks was established in *Greece*. In *India*, the Government reports that (a) state authorities have been advised to set up societies to "guide and assist returning migrants in their rehabilitation through self-employment, skill upgradation or wage-paid employment programmes", and (b) that employment exchanges record requests from returning migrants separately and render them "requisite assistance". Finally, the Committee notes with interest that one major migrant-receiving country, *Germany*, provides reintegration assistance to migrants who return to their country of origin, including information on setting up small businesses, and ensuring the recognition of qualifications obtained in Germany.

197. Information can be provided in a number of ways. It appears from the information submitted to the Committee that the majority of information tends to be provided in written form, or on occasion orally. There is no information available on whether governments also make use of the mass media such as the press, television and radio. The Committee was interested to note that, given technological developments in recent years, a number of governments, including those of *Australia*[74] and *Malaysia*,[75] now make use of the Internet to disseminate information, and one other, *Brazil*,[76] reported that it was in the process of establishing such a service.

---

[73] *New Zealand* provides immigrants with a "Settlement Information Package" covering issues such as health, housing, education, business management, laws, taxes and conditions of contract.

[74] *Australia* provides detailed information on immigration requirements and living and working conditions on the Department of Immigration and Multicultural Affairs website.

[75] The *Malaysian* Immigration Department website contains information on all aspects of migration to and from *Malaysia*.

[76] The *Brazilian* Office for Immigration Control reports that it is currently drafting a guide for the use of migrant workers and enterprises which employ them, which will be available, inter alia, on the Ministry of Labour's website.

198. With the exception of the *Philippines*,[77] no State made mention of specific information programmes or services directed towards female prospective migrants. While States are not obliged by these instruments to provide gender-specific information, the Committee considers that in light of the increasing "feminization" of migration[78] and the particularly vulnerable position in which many female migrants can find themselves, in many cases information campaigns specifically directed towards women may be appropriate.[79] The Committee notes with interest the *Philippines*' report, which indicated that a special service had been initiated to inform prospective female nationals of the conditions of work and life facing them in the host country. The programme also attempts to dissuade women from taking up positions in which they are likely to be exposed to abuse and exploitation.

199. Paragraph 5(4) of Recommendation No. 86 provides "with a view to facilitating the adaptation of migrants, preparatory courses should, where necessary, be organized to inform the migrants of the general conditions and the methods of work prevailing in the country of immigration, and to instruct them in the language of that country. The countries of emigration and immigration should mutually agree to organize such courses". It does not appear from the limited information which was supplied to the Committee that such courses are widespread, although the Committee notes with interest that the Fund to Assist Workers Abroad in *Thailand* can be used to provide training to workers prior to their departure.[80] According to other legislation in *Thailand* such preparatory courses should provide workers with information on the future employer, conditions of work and life in the host country, as well as information on culture, traditions and prohibitions in the host country.[81] An agreement between *Portugal* and *France* specifies that Portuguese workers recruited for employment in *France* must be informed in Portuguese of their rights and duties in the host country, through the provision of pre-migration courses.[82] *Indonesia* organizes pre-migration courses for all intending emigrants, including language training and a pre-departure orientation course.

[77] The Selective Deployment of Filipino Women Workers established under the Departmental Order No. 32 (1996) attempts to place women only in countries which have "mechanisms that allow protection of these workers, bilateral and multilateral agreements and other measures to ensure their protection". Quote taken from the *Philippines*' report.

[78] See paras. 20-23 above for an overview of the increasing role of women in migration. Particularly on the abuses and exploitation of migrant women, see L.L. Lim (ed.), op. cit.

[79] States may collect such information by virtue of other instruments of the ILO, such as Convention No. 111 and other international instruments such as the Convention on the Elimination of Discrimination against Women.

[80] Ministerial Regulation of 1987 respecting administration and control of expenditure of the Fund to Assist Workers Abroad.

[81] Ministerial Regulation of 1989 respecting orientation of jobseekers.

[82] Agreement between the French and Portuguese Governments relating to immigration, placement and social status of Portuguese workers and their families in France, 11 Jan. 1977.

200. Paragraphs 8 and 9 of Recommendation No. 86 stipulate that any changes to migration formalities and legislation should be published in advance of coming into force, and that adequate publicity should be given to such regulations and laws in the languages most commonly known to migrants. No governments reported undertaking activities of this nature.

1. Organization of information services

201. It was explicitly stated in the preparatory work to the 1949 instruments that Convention No. 97 was "worded in a general manner, so as to permit recourse where desirable to voluntary organizations in the application of measures".[83] Furthermore, Annex II of Convention No. 97 stipulates in Article 8 that "appropriate measures shall be taken by the competent authority to assist migrants for employment, during an initial period, in regard to matters concerning their conditions of employment; where appropriate, such measures may be taken in cooperation with approved voluntary organizations". More succinctly, Paragraph 5(1) of Recommendation No. 86 stipulates that "the free service provided in each country to assist migrants and their families and in particular to provide them with accurate information should be conducted: (a) by public authorities; or (b) by one or more voluntary organizations not conducted with a view to profit, approved for the purpose by the public authorities, and subject to the supervision of the said authorities; or (c) partly by the public authorities and partly by one or more voluntary organizations".

202. In other words, Members are under an obligation either to provide or fund the provision of information or other assistance to migrant workers or to ensure the existence of such services, and to monitor them and, where necessary, intervene to supplement them.[84] This latter point has been the subject of direct requests by the Committee in recent years.[85] Governments thus have great freedom of choice on which channels are used to provide information.

203. Many States did not provide details on information provision prior to departure. From those which did, it appears that most migrant workers and members of their families receive information prior to departure about living and working conditions in the country of destination from a combination of the sources outlined below.

---

[83] ILC, *Record of Proceedings*, 32nd Session, Geneva, 1949, p. 569, para. 5.

[84] See Picard, op. cit., Ch. 3.2.

[85] For example, in 1995 a direct request was addressed to *Israel* making reference to the Government's statement in its last report that it was the employer's responsibility to provide migrant workers with information. The Committee asked the Government to indicate whether the Government was satisfied that an adequate and free service providing migrant workers with information was in place, in accordance with the Convention.

204. Most governments reported that information provision to migrants prior to departure, as is the case in *Albania,*[86] *Paraguay,*[87] and *Switzerland,*[88] was the responsibility of an official governmental body. Some reports, including those of *Slovenia*[89] and the *United Kingdom (St. Helena),*[90] indicate that the provision of free information to prospective migrants is combined with the activities of the national employment service, while others, such as *France,*[91] have established particular agencies mandated to deal with all questions relating to emigration and immigration. In *France*, the agency provides a personalized service to prospective migrants by mail, fax or telephone including the three elements: "(i) personalized information on specific subjects; (ii) provision of a complete document on expatriation; (iii) a telephone consultancy service (by subscription)". The *Czech Republic* reported that it was currently in the process of constructing a centralized information service.

205. In terms of information provision outside the jurisdiction of the State, governments of several migrant-receiving territories, including *Canada (Province of Quebec),*[92] *Falkland Islands (Malvinas),*[93] *Hong Kong,*[94] *United States,*[95] *Uruguay*[96] and *Zambia,*[97] report that, often in combination with services provided in the receiving country, they provide information services prior to departure either through the establishment of special offices dedicated to migration questions, or more generally, through their diplomatic missions and consular services abroad.

---

[86] Under s. 9 of the Act on the employment of Albanian citizens outside the territory of the Republic of Albania (No. 7517), 1991, the Emigration Office is responsible for providing information to prospective migrants.

[87] Through the National Migration Board in coordination with the Ministry of Justice and Labour.

[88] Since 1 Jan. 1998 a section has been established within the Swiss Federal Aliens Office.

[89] Through the *Slovenian* National Employment Office.

[90] Through the Employment Unit of the Employment and Social Services Department of the *United Kingdom (St. Helena)*.

[91] For example, in *France*, the International Migration Office was established on 7 Jan. 1988, which develops information on living and working abroad for French nationals and companies. The Government also funds the "Expaconseil" service, which undertakes studies and publishes technical surveys of employment opportunities outside France, as well as providing specific information on job offers emanating from EU Member States.

[92] Offices dealing with migration issues are reported to have been established in many countries.

[93] Through the governmental offices in London.

[94] Government offices overseas provide information on visa requirements.

[95] Through the consular offices of the Department of State.

[96] Through consular services abroad.

[97] *Zambia* provides information to prospective migrants through its missions abroad.

2. Free services

206. Article 2 of Convention No. 97, Article 4 of Annex I of Convention No. 97, Article 4 of Annex II of Convention No. 97, and Paragraph 5(1) of Recommendation No. 86 stipulate that assistance and information services for migrant workers should be provided free of charge. From the limited information available on this topic, the provision of free pre-migration information does not appear to pose a problem for most countries, in contrast to the provision of free employment services specified in Article 7(2) of Convention No. 97 which, as noted in paragraphs 167-170 above, appears to have raised more difficulties. *Australia*, however, reported that a "small fee" is charged for information packages supplied by Australian embassies and high commissions. The Government indicated that the fee is paid to "cover part of processing an application for a visa. It is not a fee for information".

3. Cooperation between information services of migrant-sending and migrant-receiving countries

207. Both sending and receiving countries have a role to play in ensuring that migrants and members of their families have access to free and reliable information on all aspects of the migration process prior to departure. In this regard, cooperation between sending and receiving States is vital, in particular before prospective migrants make the choice to leave their home country. In general terms, Article 1 of Convention No. 97 provides in this regard that:

> Each Member of the International Labour Organization for which this Convention is in force undertakes to make available on request to the International Labour Office and to other Members —
>
> (a) information on national policies, laws and regulations relating to emigration and immigration;
>
> (b) information on special provisions concerning migration for employment and the conditions of work and livelihood for migrants for employment;
>
> (c) information concerning general agreements and special arrangements on these questions concluded by the Member.

208. With more specific reference to information services, Article 4 of Convention No. 143 states that "Members shall take such measures as are necessary, at the national and the international level, for systematic contact and exchange of information on the subject with other States".

209. Most governments did not provide information on whether and to what extent they collaborate with the information services of other States. Some, including *Malaysia* and *Portugal*, confirmed that they do engage in such activities, but failed to give details of the nature of this cooperation. Of the States which did submit information on this subject, most stated that, despite no formal agreements regulating information exchange, cooperation does occur in practice. Some of these, in particular *Hong Kong*[98] and *Sri Lanka*,[99] reported having close contact with other countries through labour attachés stationed abroad, or through diplomatic and consular missions. A certain number of governments, such as those of *Cameroon*, *Falkland Islands (Malvinas)* and *Trinidad and Tobago* stated that they did not participate in a regular exchange of information, but provided information on request to other countries.

---

[98] *Hong Kong* reports that "where possible, appropriate actions are taken with commissions and consular offices of other countries".

[99] *Sri Lanka* maintains contact through its labour attachés stationed in *Kuwait*, *Lebanon*, *Oman*, *Saudi Arabia*, *Singapore* and the *United Arab Emirates*.

210. A small number of States, notably *Belgium*,[100] *Malawi*[101] and *Venezuela*,[102] reported that the majority of information exchange occurs through the medium of bilateral or multilateral agreements.

211. Some States, usually those reporting little or no immigration or emigration such as *Belize* and *Cyprus*, took the position that cooperation with other States was unnecessary, given the insignificant levels of international migration occurring. Another State, *Ecuador*,[103] indicated that while such cooperation did not actually occur in practice, there were no legal barriers to prevent such information exchange should it become necessary.

212. One State, *Tajikistan*, reported that despite several attempts to obtain information on the subject of migration, in particular from private companies in the *Republic of Korea* and the Gulf States, their requests had met with little cooperation from other countries, and the Government recently requested the Office's technical assistance to develop an information network on this issue.

213. *Australia* reported that facilities for such cooperation did not exist, and considered this an obstacle to full implementation of the Convention.

B. Measures to combat misleading propaganda

214. The existence of official or authorized information services does not suffice to guarantee that migrant workers are sufficiently and objectively informed before emigrating. Workers must also be protected from misleading information stemming from intermediaries who may have an interest in encouraging migration in any form to take place, regardless of the consequences for the workers involved. Unscrupulous agents who profit from migration flows may have an interest in disseminating erroneous information on the migration process, including exaggerated claims on living and working conditions in the host country, as well as on the chances of finding and maintaining work. Given migrants' vulnerability to this form of abuse, it is essential that States take measures to combat such activities.

---

[100] *Belgium* reports that information exchange takes place through the European Union, with Benelux countries and through the Council of Europe.

[101] *Malawi* reports that States contributing to regional migration flows maintain contact through the Southern African Labour Commission.

[102] *Venezuela* cooperates closely with other States who have ratified the Andean Pact.

[103] *Ecuador* cites s. 37(IV) and (V) of the Regulation of Application of the Act on Foreigners, which foresees the principle of cooperation with migration agencies in relevant States, although in practice this has not been used.

215. Article 3(1) of Convention No. 97 provides that: "Each Member […] undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration." Again, the flexible wording of the provision, introduced during the discussions leading to the adoption of the 1949 instruments, should be noted. This leaves governments considerable freedom in terms of measures they may choose to take.

216. Initially, it should be noted that the Convention does not define what is meant by the term "misleading propaganda", as it was intended to be applicable to all national situations and all means of disseminating information. Most countries did not specify particular information media, although the *Czech Republic* reported having enacted general provisions against misleading propaganda in the press, television and radio. No initiatives aimed at combating misleading propaganda on the Internet were reported to the Committee, although governmental information submitted to other organizations indicate that a number of such measures have been undertaken.[104]

217. It should be noted that Convention No. 97 obliges ratifying States to combat misleading propaganda against both immigration and emigration. Thus, governments have an obligation on the one hand to prevent false information being disseminated to nationals leaving the country, and on the other to combat false information regarding non-nationals arriving in the country. Although the Convention does not make explicit reference to it, the Committee considers that the fight against misleading propaganda ought also to tackle propaganda targeting the national population (such as that propagating stereotypes of migrants as being more susceptible to crime, violence, drug abuse and diseases).[105] A workers' organization (CGT — Force ouvrière) in *France*, indicated the importance of anti-racism and anti-xenophobic measures in this regard. The information supplied by governments, however, was on the whole too vague to identify whether any or all of these problems were being tackled.

218. The majority of countries which have chosen to adopt legal measures to combat misleading propaganda have not enacted laws specifically aimed at protecting migrants, but rather aim to protect all workers, national and non-national, from undertaking work of which they are not fully informed. Usually enacted within the Labour Code or employment laws, such as in *Antigua and Barbuda, Bahamas, Dominica* and *Kenya*,[106] these provisions tend to protect workers against recruitment on the basis of misrepresentation, under conditions of unlawful pressure, or by mistake. Other States such as *Mozambique,*[107] have opted for legal prohibition of misleading propaganda. Yet others, such as the *Czech Republic,*[108] have directed legislation at the means of dissemination, such as the press or mass media, prohibiting the dissemination of false information in general. *Brazil*, reported having enacted general constitutional and penal provisions[109] to prevent the dissemination of misleading propaganda which includes the possibility of imprisonment for up to three years and a fine. *Germany* reported that penal sanctions can be imposed upon those who "try to seek profit from tempting Germans to emigrate by fraudulent means", and anyone wishing to disseminate commercial information or advice to prospective migrants must first obtain a permit.[110]

---

[104] For more information, see UN Commission on Human Rights, Report of the expert seminar on the role of the Internet in the light of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, E/CN.4/1998/77/Add.2, 6 Jan. 1998 (available on the United Nations human rights website).

[105] Anti-racism and anti-xenophobic policies targeting the national population will be addressed in more detail in paras. 423-426 below.

[106] For example, *Kenya* has enacted a provision under s. 33 of the Employment Ordinance, Ch. 226 of 1962 which reads: "recruited employees shall, as soon as possible after being recruited, be brought before a magistrate or a justice of the peace […] who before permitting such employees to be taken or transported to the place of employment shall satisfy himself that the requirements of

219. *Hong Kong*[111] reported that it represses misleading propaganda indirectly, by treating it as fraud, while others, for example, *Malaysia*[112] and *Uruguay*,[113] reported that while having enacted no laws specific to the issue, other institutional safeguards, including the thorough examination of work contracts, terms of employment, salary and so on, prior to issuance of a work permit, ensures that migrants for employment are protected from misleading propaganda.[114]

220. The Committee is aware of a practice in some countries whereby private recruitment agencies wishing to place advertisements in public media must

---

this Ordinance and of any rules made thereunder and of any other laws for the time being in force relating to the recruitment of employees have been observed, and in particular that the employees have not been recruited by misrepresentation, or mistake, or by application of unlawful pressure".

[107] Under Ch. 169 of the Laws of Mozambique, private recruitment agencies are obliged to refrain from exerting pressure or any form of coercion on workers, and from misleading them, ensuring always that the workers recruited accept the contract or its clauses of their own free will and with full understanding.

[108] The *Czech Republic* has enacted a Press Act (No. 81/1996) and an Act on Radio and TV Broadcasting (No. 468/1991) which oblige the media to give the public in general truthful and objective information.

[109] The Federal Constitution of *Brazil* lays down in art. 5(XIV) legal measures to protect citizens against advertising of products, practices and services harmful to health or the environment. ss. 206 and 207 of the Brazilian Penal Code bans *all* publicity against immigration and emigration. In 1997 the Committee addressed an observation to the Government asking for further details on any incidents which might have occurred in violation of these provisions.

[110] s. 1 of the Migrants Protection Act (26 Mar. 1975).

[111] Under s. 17 of the Hong Kong Theft Ordinance.

[112] The Malaysian Ministry of Foreign Affairs and the Ministry of Industrial Relations investigate any foreign companies offering employment to Malay nationals as well as examining all prospective contracts prior to issuance of a work permit.

[113] *Uruguay*, under ss. 4 and 5 of the Act on Immigration and Colonization of 18 July 1966 and ss. 32 and 37 of the Act on Foreigners of 3 Aug. 1937, ensures inspection of contracts prior to issuance of work permits.

[114] See paras. 141-144 above.

first obtain clearance from the relevant authorities. For example, in *Thailand*, recruitment agencies and employers must apply for a permit to advertise overseas positions and only those demonstrating a record of sending workers abroad may advertise for workers without having made prior arrangements with a foreign employer. Prior to publication, all advertisements are subject to screening by the local Employment Agency Registrar.[115] The Committee notes with interest the report from *Austria*, which indicated that workers who migrate for employment as a result of misleading propaganda can receive financial compensation.

221. The penalties for violating legal provisions against misleading propaganda vary according to the nature of the relevant law. In some countries, such as *Kenya*,[116] employees who are found to have been recruited under unlawful pressure or by mistake or misrepresentation are to be repatriated at the cost of the employer. In other cases, such as *Hong Kong*,[117] employment agencies risk losing their licences for misleading workers as to the terms and conditions of employment.

222. The *Falkland Islands (Malvinas)* reported that no legislation existed concerning the repression of misleading propaganda. Of the governments which have opted to intervene not through the legal system but on a more practical level, some, such as those of *Belize*[118] and *Hong Kong*,[119] indicate that they have taken measures to guarantee the quality of information given to migrants by demanding that persons or enterprises desirous of disseminating information to migrants for employment must first obtain a licence.[120]

223. Authorities may also intervene to correct false or misleading propaganda which comes to their attention and one country, the *United Republic of Tanzania (Zanzibar)*,[121] reported having undertaken such corrective measures.

224. A larger number of countries, including *Dominica, Estonia, Grenada, Guyana, Israel, Malaysia, San Marino, Trinidad and Tobago* and *Venezuela*, reported that misleading propaganda on emigration and immigration is not a problem in their countries, and for this reason, no legal or practical steps were deemed necessary to repress such activities. It should be borne in mind, however, that even in countries where misleading propaganda is not currently a problem, preventive measures may still be appropriate to ensure that this remains the case.

---

[115] Ministerial Regulation of 1986 respecting advertisement of employment offers.

[116] Under s. 37(2) of the Employment Ordinance, Ch. 226 (Revised 1962).

[117] Under s. 53(1) of the Employment Ordinance, Ch. 57.

[118] *Belize* reports that the Labour Department is the only agency responsible for the dissemination of information relating to immigration.

[119] *Hong Kong* reports that licences of employment agencies found to be disseminating misleading propaganda can be revoked, according to the provisions of s. 53(1) of the Employment Ordinance (Ch. 57).

[120] See paras. 176-179 above.

[121] The *United Republic of Tanzania (Zanzibar)*, which recruits migrant workers primarily for the annual clove harvest, reports that one year when the crop was particularly small, the Tanzanian Government distributed information to the mainland discouraging migrants from coming to the country.

225. Misleading propaganda can emanate from within the sending State, the receiving State or from an intermediary State. Given this, and the devastating consequences which it can have for migrants who are subjected to it, cooperation between migrant-sending States and migrant-receiving States is essential. Article 3(2) of Convention No. 97 states that Members should "For this purpose [...] where appropriate act in cooperation with other Members concerned". The *Czech Republic*,[122] *Hong Kong*[123] and *Portugal* reported initiatives to combat misleading propaganda in cooperation with other States. One country, *Malawi*,[124] stated that membership in a regional organization constituted a means of cooperating on the subject. *France* reported an initiative taken to cooperate with a French association in the *Netherlands*, which began on an experimental basis in 1992, and which has been followed up, and *Cameroon* indicated that information was distributed to the authorities of other States in order to combat misleading propaganda.

C. Health inspection at the time of departure

226. Article 5 of Convention No. 97 stipulates that:

> Each Member [...] undertakes to maintain, within its jurisdiction, appropriate medical services responsible for —
>
> (a) ascertaining, where necessary, both at the time of departure and on arrival, that migrants for employment and the members of their families authorized to accompany or join them are in reasonable health;
>
> (b) ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival in the territory of destination.

The purpose of these provisions is twofold: first to ensure that the migrant is fit to undertake the journey to the country of destination, and second to avoid the migrant and members of his or her family, having completed the journey to the host country, being refused entry on medical grounds.[125]

227. Countries which provided information on this question report enacting legislation in a number of areas. Some countries, such as *Cyprus*,[126] include provisions in their general emigration legislation to the effect that all prospective emigrants are subject to a medical examination. Other countries include provisions in their employment legislation, to the effect that either all recruited workers must undergo medical examination, as is the case in *Dominica* and *Zambia*, or workers who are specifically recruited for employment outside the home country must be subject to medical examination, as is the case in *Belize* and *Malaysia*. One of the conditions for entry into *Mexico* is to present an official certificate of good mental and physical health, delivered by the authorities of the country of origin.[127] Others, such as *Cyprus* and *Trinidad and Tobago*, indicate that the country's public medical services permit access by all nationals to adequate medical care at any time. In *Thailand* a doctor must obtain a licence prior to carrying out medical examination of jobseekers going to work abroad.[128]

---

[122] The *Czech Republic* reports that to combat misleading propaganda targeted at the emigration of Czech nationals it cooperates with *Canada, France* and the *United Kingdom*.

[123] *Hong Kong* reports that, where possible, it cooperates with commissions and consular offices of other countries to combat such propaganda.

[124] As a member of the Southern African Labour Commission.

[125] It should be recalled that originally this provision was conceived in the interest of the employer, to ensure that recruited workers were healthy when they arrived. See also para. 2[illegible]7.

[126] *Cyprus* reports that medical examinations are conducted according "to the requirements of the country to which they wish to emigrate".

228. Regarding the costs of medical examination, Convention No. 97 specifies that the State should ensure the medical examination of prospective migrants prior to their departure, within its own jurisdiction. It does not specify who should bear the costs of the examination. The *United Kingdom (Bermuda)* reported that work permits are not issued to nationals recruited to work abroad unless the migrant produces a full chest X-ray and a doctor's certificate. In this case, and other similar cases, such as *Dominica*, it appears that it is the worker's responsibility to cover the costs of such an examination. Other reports, such as those from *Belize, Hong Kong, Israel* and *Mauritius*, indicated that it was the employer's or recruiter's responsibility to ensure medical inspection costs are covered. *Kenya* indicated provisions to the effect that any migrant who refuses to attend a medical examination may be sanctioned by a fine of up to 20,000 shillings, or imprisonment for up to one year, or both. While the provision of medical services prior to departure and upon arrival is an obligation under Article 5(a) of the Convention, the Committee considers that such sanctions are not in keeping with the spirit, if not the letter, of the instruments.

229. It was noted above (paragraph 107) that States are not permitted to exclude any categories of migrants, other than those explicitly mentioned in the Conventions, from the provisions. In relation to the provision of medical inspection prior to departure, this appears to be problematic for a number of governments which reported that, for instance, that of *Hong Kong*,[129] only workers recruited for manual labour overseas and only nationals migrating for short-term contracts, or, as is the case notably in *Grenada*[130] and *Guyana*, only workers recruited under government-sponsored schemes are guaranteed medical examination prior to their departure. Similar problems appear to be reflected in the countries of employment when it comes to guaranteeing medical examination upon arrival, as discussed below.

---

[127] s. 62 of the General Population Act.

[128] Notification of the Department of Labour, 1990.

[129] *Hong Kong* reports that migrants for permanent settlement are "normally required by the consulates or representatives of the countries concerned to be medically examined and certified fit for employment", implying that there is no need for Hong Kong to ensure medical examination.

[130] The Government reported that "there are no statutory provisions which require persons migrating privately to specify the purpose for leaving the country and thus, except for officially sponsored schemes, the reason for migrating would not be known".

230. Information submitted by governments did not, as a rule, mention the extension of medical inspections to members of migrant workers' families entitled to accompany them to the country of employment. *Cyprus*[131] and *Malaysia* indicated that medical examinations were undertaken for all migrants, not exclusively migrants for employment.

231. Paragraph 14(4) of Recommendation No. 86 provides: "As far as possible, intending migrants for employment should, before their departure from the territory of emigration, be examined for purposes of occupational and medical selection by a representative of the competent authorities of the territory of immigration". A small number of receiving countries, including *France*,[132] reported stationing officers in sending countries for the purposes of ensuring medical examinations were undertaken according to the standards of the country of employment.

232. Few countries, among them *Belize*,[133] reported other initiatives to ensure hygienic and healthy conditions at the time of departure, in accordance with Article 5(b) of Convention No. 97. The information which was provided indicates that, as a general rule, the medical inspection of migrants prior to departure does not cause major problems for either the sending States or the workers directly involved.

D. Other measures to facilitate departure of migrants

233. Beyond the measures outlined above, little information was provided by governments on additional measures to facilitate the departure of migrants for employment. A few initiatives, however, are worthy of note.

234. A number of States reported that they assisted nationals recruited for employment abroad in ensuring that the appropriate administrative formalities were completed successfully. Some, such as *Mauritius*[134] and *Trinidad and Tobago*,[135] reported that they arranged for the issuance of travel documents, including booking transport for migrants, as a means of facilitating their departure. The report of *Hong Kong* indicated measures to simplify procedures to be completed prior to emigration. *Mauritius* reported that under employment legislation recruiters are responsible for obtaining entry certificates and documentation, and for the completion of all formalities on the behalf of every recruited worker.

---

[131] *Cyprus* reported that emigrants are offered vaccinations or treatment against communicable diseases according to their destination.

[132] In *France*, the International Migration Office, under the Decree of 7 Nov. 1994, undertakes medical checks in sending countries for migrants intending to reside in France for a period in excess of three months. According to Decree No. 94-211 of 11 Mar. 1994, this is optional in the case of migrants emanating from within the European Union.

[133] *Belize* reported that vehicles used to transport nationals for employment abroad under the West Indies Farm Labour Scheme were occasionally inspected to ensure hygienic conditions.

[134] The Mauritian Ministry of Education and Human Resource Development arranges for the issuance of passports and air tickets.

[135] *Trinidad and Tobago* reports that its authorities undertake to issue travel documents, as well as ensuring the travel itinerary, booking of tickets and training in the case of bus drivers prior to departure.

235. As previously mentioned in connection with medical examination, a small number of States, including *Grenada* and *Guyana*, reported that special facilities to encourage the smooth departure of migrants for employment were only guaranteed to particular categories of workers, notably those recruited for government-sponsored migration.

236. The Committee notes the statement in the report of *Oman* which reads "in practice, the procedures of departure, journey and reception of workers are easy, and they do not require any exceptional or special measures as long as workers are in possession of valid entry visas".

237. It should be noted that Article 4 of Convention No. 97, which binds States to facilitate the departure, journey and reception of migrants for employment, applies only to measures taken within the jurisdiction of the State. Thus, as *Australia* points out, receiving countries are "not responsible for the departure arrangements and conditions on the journey for incoming migrants for employment".

Section III. During the journey

238. A number of cases regarding migrants being illegally transported across international borders under appalling conditions, in many cases resulting in injury to, or even the death of, the migrants concerned have recently come to light and migration in abusive conditions will be discussed in more detail in paragraphs 289-364 below. The present chapter deals exclusively with the journey of regularly admitted migrant workers and members of their families authorized to accompany or join them.

239. According to Article 4 of Convention No. 97, States are required to ensure that: "Measures shall be taken as appropriate [...] to facilitate the departure, journey and reception of migrants for employment." As was noted above, the instruments do not specify in practical terms what these measures entail. However, States which have accepted the relevant provisions are obliged by Articles 6(d) of Annex I and 7(d) of Annex II to Convention No. 97 to ensure "the safeguarding of the welfare, during the journey and in particular on board ship, of migrants and members of their families authorized to accompany or join them". It is further specified that the responsibility for ensuring migrants and members of their families' welfare is protected lies with the public employment service specified in Article 4 of Convention No. 97.

240. Almost without exception, the reports provided by governments contained no information on the subject of migrant workers' protection during the journey to the country of employment. As a result, the Committee has found it extremely difficult to evaluate the measures which States have taken in this regard.

241. One State, *Ethiopia*, reported that this Article was incompatible with national policy, which they had interpreted as indicating that even if migrant workers are not competent for a specific job, the Article requires each member State to receive migrants and facilitate migration.

A. Health care during the journey

242. Article 5(b) of Convention No. 97 stipulates that: "Each Member [...] undertakes to maintain, within its jurisdiction, appropriate medical services responsible for [...] (b) ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions [...] during the journey." It was stated above that medical inspection should take place on departure from the home country and upon arrival in the host country. In the intermittent period, regular-entry migrants must also be guaranteed adequate health care.

243. In 1995 the Committee addressed a direct request to *Israel* on this subject, stating that "the Committee notes the Government's statement that it is the responsibility of the employer to take proper care of the workers during their travel. It recalls that these provisions of the Convention require every State party to take appropriate measures to facilitate the departure, journey and reception of migrant workers and members of their families authorized to accompany them". To the Committee's regret, no governments provided information on this aspect of the instruments, and as a result, the Committee finds itself unable to assess the implementation of these provisions.

B. Cooperation among sending, receiving and transit States

244. Article 7 of Annex I to Convention No. 97 states that sending and receiving countries should, where appropriate "enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Annex". With the exception of *Israel*, which indicated that no situation had yet arisen necessitating such agreements, no governments provided detailed information on such agreements.

245. Article 5 of Annex II to Convention No. 97 states that: "In the case of collective transport of migrants from one country to another necessitating passage in transit through a third country, the competent authority of the territory of transit shall take measures for expediting the passage, to avoid delays and administrative difficulties." In this regard, *New Zealand* reported that no transit visas were required for international passengers transiting the country for a period of up to 24 hours. The report of *Lebanon* questioned whether transit countries which have not ratified the Convention were bound to respect this provision. The Committee does not consider that this provision implies any such obligation on non-ratifying States. The Committee recalls that the obligation to cooperate binds only States which have ratified one or both Conventions, without there being any reciprocity other than free and sovereign will on the part of the other States to respond to this willingness to cooperate.

246. Paragraph 15(2) of Recommendation No. 86 states that: "The movement of the members of the family of such a migrant [introduced on a permanent basis] authorized to accompany or join him should be specially facilitated by both the country of emigration and the country of immigration."

247. No governments indicated to the Committee any measures which were taken in cooperation, or in their capacity as countries of transit to facilitate the journey of migrant workers, with the result that the Committee cannot assess the practical implementation of the provisions.

C. Costs of the journey

248. The cost of the outward journey is not a subject which is broached by the provisions in question. However, a number of migrant-sending countries, such as *Antigua and Barbuda*,[136] *Bahamas, Ghana, Mauritius*,[137] *Mozambique* and the *United Republic of Tanzania (Zanzibar)*, indicated provisions by which workers recruited for employment abroad are not liable for travel costs. Some migrant-receiving countries or territories, such as *Hong Kong*, also indicated that contracts for incoming non-nationals recruited as domestic helpers must contain a clause stipulating that the worker or his or her family shall not cover the costs of the inward journey and the worker must not cover the costs incurred during the journey such as overnight accommodation and food.

D. Exemption from customs duties

249. Article 1 of Annex III to Convention No. 97 states that "personal effects belonging to recruited migrants for employment and members of their families who have been authorized to accompany or join them shall be exempt from customs duties on arrival in the territory of immigration". Article 2 extends exemption from customs duties to "portable hand tools and portable equipment of the kind normally owned by workers".

250. The Committee notes that while 21 of the 41 States which have ratified Convention No. 97 have excluded Annex III from ratification, compliance with these Articles does not appear to pose major problems in practice. Most countries which have provided information on this subject, such as *Israel* and *New Zealand*, exempt migrants' personal possessions from customs duty.

---

[136] Under s. 2(a) of the Canadian/Caribbean Seasonal Workers Agreement of 1978 two-way transport is not charged to the worker.

[137] s. 5(2)(c) of the Recruiting of Workers Act, 1993 (No. 39).

E. Reasons for lack of information

251. Almost without exception, the government reports provided no information on the treatment and protection of migrants during the journey to the country of employment. In confronting the same problem during the 1980 General Survey,[138] the Committee stated that, given the evolution of air transport and the decreasing likelihood that migrants are transported en masse by special forms of transport, certain provisions of the instruments relating to the protection of workers during the journey have "ceased to be of current interest". This explanation was, at the time, confirmed by the report of the *Federal Republic of Germany*, which specifically stated that provisions concerning migrants' welfare during the journey had been dropped from national legislation.

252. In the past two decades, the trend towards air travel has further augmented. In this regard, *Hong Kong* reported that "the need for medical attention on board aircraft is normally minimal because the time spent on air travel is short". The decline of government-sponsored group transfer of migrants has also become apparent. It should be noted however, that a very small number of migrant-sending countries, including *Malawi*, continue to organize government-sponsored group migration through the use of charter planes and, as is the case in *Dominica*, under the escort of government officials. However, the Committee is of the opinion that the spirit in which the instruments were conceived, namely to provide highly flexible instruments which could apply to all national situations, is no longer reflected through the provisions of the instruments being examined in this survey on transportation of migrant workers, and these provisions have become irrelevant for the vast majority of States, in so far as migration no longer takes place under such conditions.

Section IV. Upon arrival

253. Article 4 of Convention No. 97 states in the most general terms that: "Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the [...] reception of migrants for employment." This provision is intended to ensure that migrants are well received in the country of destination, and that measures are taken to facilitate their smooth transition to the host country. In relation to this provision, the Government of *Lebanon* reported that facilitating the departure, journey and arrival of migrants constitutes, along with the provision of free medical services, the biggest obstacle to ratification of the Convention.

254. Once more, the flexible wording of the provisions should be noted. States are only required to ensure measures when it is deemed "appropriate" for them to do so. Depending on the national situation, this may imply, for example, that measures are appropriate when migration flows reach substantial proportions, or when problems emerge during the reception process, or in the case of migrants arriving to undertake particularly vulnerable occupations, or in any number of other cases.

---

[138] Para. 112.

255. The specification that countries are only obliged to enact measures "within their own jurisdiction" ensures that migrant-sending States are not obliged to provide reception services in the country of employment. In this regard, the following paragraphs can, unless otherwise specified, be read as dealing only with reception services provided by and in the country of employment.

A. Medical services and hygienic conditions upon arrival

256. It is specified in Article 5(a) of Convention No. 97 that Members undertake to provide appropriate medical services for "ascertaining, where necessary, both at the time of departure and on arrival, that migrants for employment and the members of their families authorized to accompany or join them are in reasonable health". The provision of medical inspection prior to departure was discussed in paragraphs 226-232 above.

257. At the time of drafting the 1949 instruments, the majority of migration flows involved long, arduous journeys, often by boat, to the country of destination, and it was considered that medical inspection at either end of the journey was necessary to ensure that migrants completed the process under healthy and hygienic conditions. However, in the 1980 General Survey, the Committee came to the conclusion that, in light of the development of transportation technology and the increasing likelihood that aircraft are the primary means of migration, medical inspection both at the time of departure and upon arrival was probably no longer necessary to ensure that workers are fit. The Committee reiterates this point, and considers a single medical inspection (preferably on departure) as sufficient to ensure application of the provisions, in so far as migration is actually carried out under these conditions.

258. Medical examinations upon arrival appear to be routine practice in many migrant-receiving countries, including *Luxembourg*, *Syrian Arab Republic* and the *United States*. In some countries the medical inspection takes place the day after arrival, as is the case in *Mauritius*, while in other countries, such as *Switzerland*,[139] the inspection takes place up to 15 days after arrival. One country, *Bahrain*,[140] reported that it was the responsibility of the employer to ensure that migrant workers are free from all contagious disease. Another country, the *Netherlands*, reported that no special facilities exist for medical inspection of migrants, but that migrant workers are entitled to make use of the health care services in the same way as nationals. The Committee notes that the necessity for a medical examination appears to depend, in some cases, upon the length of the migrant's intended stay. For example, the *United Kingdom* reported that migrants entering for more than six months should normally pass a medical examination or produce a medical certificate, and *France* indicated that migrants entering the country for less than three months are not obliged to be medically tested. In this and other cases, such as that of *Paraguay*, production of a valid medical certificate avoids the need for a medical examination. This also appears to be the case in *Belgium* where only the primary migrant needs to produce a medical certificate; members of his or her family are not obliged to do so.

---

[139] In 1991, *Switzerland* removed the obligation for medical testing for tuberculosis for immigrants from countries of the European Union, members of the European Free Trade Association, as well as *Australia*, *Canada*, *New Zealand* and the *United States*.

[140] Violation of this responsibility can result in a fine of up to 500 dinars or imprisonment for six months.

259. In most cases, however, as for example in *Belize*, medical inspection and the provision of adequate medical services upon arrival appears to be extended to all categories of regular entry migrants and are not restricted only to migrants for employment.

260. Beyond the provision of immediate medical examination, Article 5(b) of Convention No. 97 stipulates that Members undertake to maintain medical services for the purpose of "ensuring that migrants for employment and members of their families enjoy adequate medical attention [...] on arrival in the territory of destination". This is not the same obligation as ensuring that migrants are in reasonable health, but rather requires ensuring that services are available for them to consult should they so require. It may be of interest to note that two countries, *Lebanon* and *Morocco,* reported that the provision of free medical services and the verification of hygienic conditions at the time of arrival constituted major barriers to ratification of Convention No. 97.

Content of medical testing

261. One issue which has come to the Committee's attention is the content of medical tests to which migrants are subjected upon entry. Governments report various tests which must be undergone before migrants are permitted to enter the country. *Luxembourg* reports that all nationals of States outside the European Union must be cleared of any illness or physical or mental disability which might prevent the individual from fulfilling the occupation which they have been recruited to do, or which might entail prolonged hospitalization. In *Cyprus*, immigrants are tested for, inter alia, hepatitis and venereal diseases. *New Zealand* requires X-ray certificates from all immigrants except pregnant women and children. *France* reported that it tests all non-EU nationals intending to stay for more than three months for bubonic plague, cholera and yellow fever, as well as illnesses which are considered a threat to public health, such as "(i) addictions to substances or plants classified as drugs; (ii) mental disorders likely to threaten public order or safety". The *United Kingdom* indicated that entry can be refused to migrants if they are suffering from a "specified disease which may interfere with his ability to support himself or his dependants".[141] *Argentina* reports that entry can be refused if a migrant is suffering from a contagious disease which could pose a threat to public health, or a mental or physical handicap which would prevent the individual from undertaking the occupation for which he or she was recruited. In *Thailand*, proof of a smallpox vaccine is required and entry can be refused on grounds of insanity, leprosy, elephantiasis and serious drug or alcohol addiction.[142] The Committee noted with interest the report of *Paraguay*, which indicated that refusal of entry on medical grounds of family members of migrants may be waived following an evaluation of the seriousness of the illness and the financial and moral situation of the family.

---

[141] s. 80 of the Immigration Act, 1971, as amended in 1989.

262. The legislation of some countries, including *Antigua and Barbuda*, prohibits entry on medical grounds to any person who appears, for afflictions as varied as blindness, alcoholism, dementia, or other physical or mental conditions, to constitute either a danger to the native population, or whose health care is likely to become a burden on public funds. In this regard, the Committee draws attention to the fact that exclusion of individuals on certain medical or personal grounds which do not pose a danger to public health or a burden to public funds, may be dated, due to scientific developments or changing social attitudes, and some may now even constitute unacceptable discrimination. In particular, the Committee notes that *Trinidad and Tobago*, prohibits entry to, inter alia, homosexuals.[143]

263. Medical testing and the prohibition of entry of persons on the grounds that they may constitute a grave risk to public health is likely to be a routine and responsible precaution to take prior to permitting the entry of non-nationals. In this regard, the Committee draws the attention of member States to the International Health Regulations adopted by the World Health Assembly in 1969, which lay out the measures which are deemed reasonable to prevent migration from posing a threat to public health. In particular reference is made to article 84 which states that:

> Migrants, nomads, seasonal workers or persons taking part in periodic mass congregations, and any ship, in particular small boats for international coastal traffic, aircraft, train, road vehicle or other means of transport carrying them, may be subjected to additional health measures conforming with the laws and regulations of each State concerned, and with any agreement concluded between any such State.

264. One development which the Committee notes from a minority of reports is the testing of prospective migrants for the Human Immunodeficiency Virus (HIV) and the Acquired Immunodeficiency Syndrome (AIDS).[144] For example, *Cyprus* reports that all migrant workers are tested for AIDS prior to arrival and upon their departure from the country. This also appears to be the case for the *Russian Federation*, where non-nationals wishing to stay more than three months in the country must undergo AIDS screening, and entry is denied to anyone testing positive. In *Cuba*, migrants wishing to stay for more than three months undergo AIDS screening and non-Cubans testing positive are repatriated. Similar provisions appear to exist in the *Republic of Korea* and *Uzbekistan* for various categories of non-national workers. In this regard, the Committee draws attention to its statement made in the 1996 Special Survey of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), regarding discrimination on the grounds of state of health. In this survey, the Committee wrote:

---

[142] Notification of 1979 of the Ministry of the Interior respecting qualifications or forbidden qualifications and conditions for aliens applying for work permits.

[143] Under s. 8(1)(f) of the Immigration Act, 1969, No. 41.

[144] For further information on this subject, see L. N'Daba and J. Hodges-Aeberhard: *HIV/AIDS and employment* (Geneva, ILO, 1998).

> Discriminatory practices may take many forms, which are often hidden. For example, workers may be questioned about their HIV status, or be required to submit to AIDS screening, most often without their knowledge. They may also be dismissed solely on the grounds of the HIV status. Each of these practices constitutes discrimination [...] in the Committee's opinion, efforts to eliminate all discrimination based on state of health, and on HIV/AIDS in particular, should be carried out as part of the national policy to promote equality of opportunity and treatment.

265. The Committee also draws attention to the report of the United Nations Secretary General to the Second International Consultation on HIV/AIDS and human rights,[145] which states:

> The Human Rights Committee has confirmed that the right to equal protection of the law prohibits discrimination in law or in practice in any fields regulated and protected by public authorities. These would include travel regulations, entry requirements, immigration and asylum procedures. Therefore, although there is no right of aliens to enter a foreign country or to be granted asylum in any particular country, discrimination on the grounds of HIV-status in the context of travel regulations, entry requirements, immigration and asylum procedures would violate the right to equality before the law.

266. The Committee reaffirms these statements, and considers that refusal of entry or repatriation on the grounds that the worker concerned is suffering from an infection or illness of any kind which has no effect on the task for which the worker has been recruited, constitutes an unacceptable form of discrimination.[146]

B. Information provision on arrival

267. Article 2 of Convention No. 97 states that: "Each Member [...] undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information." Paragraphs 191-213 above analysed the provision of pre-migration information services. The focus of this section is upon the information services which States are obliged to ensure exist for migrants once they arrive in the country of employment. However, many of the same provisions apply to this stage of information provision as before, and to avoid unnecessary duplication, citations of ILO instruments relating to this subject will only be made where they apply specifically to information provision upon arrival.

---

[145] E/CN.4/1997/37.

[146] The Committee recalls the Joint Statement ILO/WHO on AIDS and the Workplace, Geneva, 27-29 June 1998, which emphasizes that "HIV infection by itself is not associated with any limitation in fitness to work. If fitness to work is impaired by HIV-related illness, reasonable alternative working arrangements should be made". Although this statement deals only with HIV infection, the same principle can be applied to other illnesses or infections.

1. Information and assistance services

268. As was noted above, in Section II, the wording of the provisions relating to information services is sufficiently general to allow a variety of measures to be considered as complying with the instruments, although Annexes I and II, as well as the provisions of Recommendation No. 86, indicate more clearly what is entailed in practical terms.

269. The information which was supplied to the Committee regarding the activities of information services to non-nationals upon their arrival in the country of employment was varied. While the majority of government reports did not broach this subject in any detail, those which did supplied information which the Committee examined with interest.

270. Regarding the languages in which information is provided, *Australia*,[147] and *Hong Kong*[148] stated that they provided information to prospective or newly arrived migrants in languages of the most prominent migrant-sending countries. Of particular interest to the Committee was the report from *Finland* which stated that besides providing oral information in either Finnish or the migrant's mother tongue, and written information in ten languages, the Government encourages all governmental agencies and voluntary organizations working with migrants in *Finland* to provide information in all the languages spoken in the country. The Committee notes with interest that in *Finland*, many information packages are transcribed in English or Finnish in a style which is designed to be easily understandable to migrants who have not been in the country for a significant period of time. *Italy*[149] stated that it published an explanation of immigration legislation and other laws of relevance to migrants in eight languages and, *France* indicated to the Committee that brochures are available in French, Arabic and Turkish.

271. One country, the *Syrian Arab Republic*, reported that the public employment services do not provide information to migrant workers in their own languages, and the report of *Canada (Province of Nova Scotia)* stated that the provision of information in either the migrant's own language or a language that he or she could understand (other than the host country's language) would "involve major implications and costs" and constituted an obstacle to full application of the Recommendation.

272. Paragraph 5(2) of Recommendation No. 86 covers, as noted above, the issues which may be of particular interest to migrants, relating to "emigration, immigration, employment and living conditions, including health conditions in the place of destination, return to the country of origin or of emigration, and generally speaking any other question which may be of interest to them in their capacity as migrants". A number of major migrant-receiving countries supplied information regarding such matters, which the Committee examined with interest. The most comprehensive information examined by the Committee was that provided by *Finland* and *New Zealand*. The publication of either "initiation packages" or separate documents dealing with different aspects of life and work in the host country appears, at least in these countries which provided information to the Committee, to be detailed and comprehensive.

---

[147] *Australia* provides multilingual booklets for prospective migrants.

[148] The *Hong Kong* Departments of Labour and Immigration provide free leaflets and publicity in both Chinese and English.

[149] *Italy* reports having published a brochure in Arabic, English, French, Italian, Polish, Portuguese, Spanish and Tagalog explaining the content of Act No. 39/90.

273. As was found to be the case with pre-migration information, the vast majority of States do not provide information which is gender-specific. Again, it should be noted that this in itself is not an obligation under any of the ILO instruments concerning migration specifically, though it may be required under other international instruments. An initiative which the Committee notes with interest, however, is that taken in *Finland*, which has undertaken to provide a number of information leaflets and booklets specifically directed at female migrants. These documents cover issues such as pregnancy, child care, marriage, health care, maternity grants, family allowances, "mother-child" homes, rape and sexual harassment. *Germany*[150] also reported directing language classes and vocational training to migrant women and girls.

2. *Organization of the service*

274. It was stated in paragraphs 201-205 above that, according to Paragraph 5 of Recommendation No. 86, information services can be provided for by public authorities, by one or more non-profit-making organizations or by a combination of these two sources.

275. As was noted earlier, a range of mechanisms have been instituted in migrant-receiving countries to provide information to migrants upon their arrival in the host country. In *New Zealand*, for example, the customs authorities publish a number of brochures for incoming migrants on such subjects as custom charges, prohibited and restricted imports, household concessions and baggage searching, while the Immigration Service publishes information on immigration policy. *Italy* reports that information is provided to migrants through state-funded organizations, as well as numerous trade unions, advice centres, benefit advice centres and assistance centres, some of which are voluntary organizations. *Chile* reported that while no centralized government body exists to provide such a service, every local government has a foreigners' department which advises non-nationals on administrative procedures and answers queries from migrants. *France* previously reported to the Committee that demand for information and guidance services had been uneven and that a reorganization of the state-funded information services was required.[151]

---

[150] Through the Federal Ministry for Labour and Social Affairs.

3. Free service

276. Article 2 of Convention No. 97, Article 4 of Annex I of Convention No. 97, Article 4 of Annex II of Convention No. 97 and Paragraph 5(1) of Recommendation No. 86 stipulate that Members must ensure that migration information and assistance services be provided free of charge. As was stated earlier, on the basis of the information provided in the government reports, this does not appear to pose major problems of implementation in migrant-receiving countries.

C. Accommodation, clothing and food

277. Paragraph 10 of Recommendation No. 86 stipulates that migration should be facilitated "by such measures as may be appropriate: (a) to ensure that migrants for employment are provided in case of necessity with adequate accommodation, food and clothing on arrival in the country of immigration".

278. A number of governments provided information on this provision, from which it appears to be extremely rare for all migrant workers to be provided with accommodation, clothing and food. Some countries, such as *Antigua and Barbuda*[152] and *Canada* indicated that bilateral and/or multilateral agreements make provisions for accommodation.[153] One country, *Saudi Arabia*, reported that employers recruiting migrants to work in isolated areas are obliged to provide appropriate housing, while another, *Pakistan*, stated that where migrants were involved in certain occupations, such as factory work, it would be expected that the employer would provide appropriate clothing. *Italy* reported that services were available to non-EU workers urgently requiring accommodation. In one case, *Chile*, the Government reported that accommodation and food were provided to refugees by the Catholic Migration Institute.

279. Some countries, including *Cyprus, Israel* and *Mauritius* reported that employers are bound to provide minimum standards of accommodation, which are subject to inspection. In this regard, *Singapore* indicated that it had introduced guidelines to encourage employers to improve the standards of accommodation for migrant workers, including schemes to encourage dormitory housing and subsidized public housing. One country, *Barbados*, reported that the Barbados

---

[151] The Committee requested further information from the Government on this subject in a direct request in 1995.

[152] Under s. 2(e)(i) of the Canadian/Caribbean Seasonal Workers Act, 1978, the employer must provide free accommodation and food at a maximum cost of $3 per day to the worker. Where food is not provided, workers must be provided with cooking utensils, fuel and facilities.

[153] Under the Canadian/Caribbean and Mexican Seasonal Agricultural Workers Programme, NAFTA, the Canadian/Chile Free Trade Agreement, and the General Agreement on Trade in Services.

Liaison Officer stationed in *Canada* is responsible for providing accommodation to Barbados nationals migrating under government-sponsored schemes.

280. Beyond government-sponsored migration and migrants recruited to work in specific industries or locations, it appears from the limited amount of information available to the Committee that the provisions relating to provision of accommodation, clothing and food may be of less relevance now than previously. At the time of drafting the 1949 instruments most migration took the form of group transfers, often for seasonal or short-term work in such occupations as agriculture and the building trade. At this time it was common for employers to house large groups of migrants near the site of employment in dormitory or group accommodation, and to provide food on site. Clothing designed for the specific task to be undertaken was also commonly provided by employers. Since that time, however, the nature of migration has changed, and as has been pointed out previously in this survey, the trend is now to migrate on a more or less individual basis, either migrating in the search of employment or seeking employment through public or private recruitment agencies. In this regard, it no longer appears to be the case that all migrants are in as obvious need of accommodation, food and clothing provision.

281. In particular as regards migrants who have entered a country for permanent settlement, or even medium-term work, it may be that the provision of migrant-specific housing, effectively segregating the migrant population from the national population, is not conducive to social integration, and may encourage stereotyping of both migrant and national communities. One exception to this statement, however, is the continued recruitment of migrants for seasonal or short-term work, who may be in particular need of assistance to find accommodation (see box 3.3 below). Given this exception, however, the Committee perceives the application of Paragraph 10(a) of Recommendation No. 86 to all migrants, regardless of the length of their employment, to be no longer relevant to today's major migratory movements.

Box 3.3

Guidelines on special protective measures for migrants in time-bound activities

Accommodation

Several categories of migrants who are to be engaged in time-bound activities cannot be expected to have the time and resources to enter a country, look for housing and then start to work. The employers should be held responsible for adequate housing arrangements concerning migrant workers, particularly in the case of seasonal and project-tied workers. The extent of their responsibility should be provided for in the contract of employment.

Source: Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, op. cit., Annex I, para. 3.1.

282. In this regard, the Committee would like to draw attention to the Workers' Housing Recommendation, 1961 (No. 115), which may be of relevance to migrants working in time-bound activities. It is stated in Paragraph 2:

> It should be an objective of national housing policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent.[154]

D. Other reception facilities

1. Administrative formalities

283. Article 6 of Annex I and Article 7 of Annex II to Convention No. 97 state that the measures to be taken for the purposes of the Convention include "(a) the simplification of administrative formalities". One country, *Israel*, stated that "individual employers are responsible for the services listed in this Article". The Committee points out that according to Article 4 of the Convention, it is States who are obliged to undertake the relevant measures to facilitate migration. Another Government, that of *Ethiopia*, stated "this should be seen by each Member that the rights and working conditions and employment opportunities and other services of their nationals should be protected and not be affected by international migration".

2. Interpretation services

284. Article 6 of Annex I and Article 7 of Annex II to Convention No. 97 stipulate also that measures should include "(b) the provision of interpretation services". *Norway* indicated that a public interpretation service is available under the Immigration Directorate which translates material for migrants and authorities, which appears to be free of charge. Very little other information was provided on this subject to the Committee.

3. Other assistance

285. Finally, Article 6 of Annex I and Article 7 of Annex II to Convention No. 97 include "(c) any necessary assistance during an initial period in the settlement of the migrants and members of their families authorized to accompany them".

286. Article 8 of Annex II states that: "Appropriate measures shall be taken by the competent authority to assist migrants for employment, during an initial period, in regard to matters concerning their conditions of employment; where appropriate, such measures may be taken in cooperation with approved voluntary organizations."

---

[154] See also United Nations Fact Sheet No. 21, *The human right to adequate housing*.

287. Few governments provided detailed information on this subject. Two States, *Antigua and Barbuda* and the *Bahamas*, indicated that reception facilities, including escorting the migrant from the place of entry to the place of employment, are undertaken for migrants participating in government-sponsored migration schemes. Other countries, such as *Luxembourg*, stated that reception facilities for migrants exist, but failed to give details on how these operate in practice. *France* reported that a major focus of social policy regarding immigration was facilitating the integration of family members of migrant workers. To this end, it has established reception facilities particularly adapted to the needs of migrant workers' families. On the whole, however, the lack of detailed information from member States has hindered the Committee's ability to undertake a comprehensive comparison of measures taken in relation to these provisions.

* * *

288. From the information submitted to it on the application of provisions to facilitate the recruitment, departure, journey and arrival of migrants for employment, the Committee concludes that a number of difficulties appear to have arisen in practice for member States. To summarize, the major difficulties hindering ratification or application of the provisions relating to recruitment are: (a) the provision of free public employment services to non-nationals; and (b) confusion over the obligations relating to the operation of private (fee-charging) agencies. The provisions relating to measures to be taken prior to the departure of migrants do not appear to have raised any major difficulties for the majority of States which provided information on this subject, and the Committee notes with interest the variety and creativity characterizing the means which have been employed to ensure that workers are well informed prior to migrating. In terms of application of the provisions relating to protection of migrants during their journey to the country of employment, the Committee concludes that many of these no longer appear to be relevant to the vast majority of migration flows today. The redundancy of these provisions appears to be reflected by the lack of information which was provided to the Committee on this subject. Finally, in relation to the arrival of migrants in the host country, a major point of concern for the Committee is the growing phenomenon of testing incoming migrants for HIV or AIDS infection.

CHAPTER 4

MIGRANT WORKERS WHO ARE IN AN IRREGULAR SITUATION AND/OR ILLEGALLY EMPLOYED

289. Illegal migration for employment is not new; what is striking about it today is the scale on which it takes place and the fact that it affects both countries of origin and receiving countries. Although there are no precise figures available in this area, the International Organization for Migration (IOM) estimates that between 15 and 30 million persons who are economically active in a country other than their own are there in an irregular situation, having entered the country clandestinely and/or being illegally employed.[1] What gives even more cause for concern than this increase in numbers is the way in which the nature of migration is changing. Not only is illegal migration becoming a highly organized international activity (see box below), but it is now closely linked to other lucrative criminal activities[2] (drug and arms trafficking, falsification of identity papers,[3] human trafficking, forced prostitution, etc.). Formerly accounting for only a small percentage of clandestine migration, labour trafficking[4] has been particularly affected by this change and, unless it is brought under control, could become one of the dominant forms of abusive migration in the years to come. In this regard, the Committee has taken note of the comments submitted by the World Confederation of Labour (WCL), according to which trafficking (particularly of women and children), which it classifies as a "form of modern slavery", is constantly increasing in certain regions of the world.[5]

---

[1] B. Ghosh: *Huddled masses and uncertain shores: Insights into irregular migration* (IOM and Martinus Nijhoff Publishers, 1998), p. 18.

[2] "Labour trafficking earns the mafias that organize it some US$7 billion a year", according to a study by André Linard for the International Confederation of Free Trade Unions (ICFTU), entitled *Migration and globalization: The new slaves* (July 1998).

[3] The expression "undocumented migrant", which is often used in English, is nonetheless often a misnomer. In reality, the majority of irregular status migrants are able to produce identity papers. The problem is that "in recent years, documents produced upon arrival in many countries are bogus documents — consisting of counterfeit or altered documents, forged unissued passports stolen from embassies and consulates throughout the world, or even genuine documents that were improperly issued. In recent years, a whole underground industry for the production of fake documents (e.g. passports, visas, identity papers) has sprung up to cater to the needs of migrant trafficking. Bogus documents are frequently recycled to be used again and again […] Whereas the technology exists in many countries to prevent illegal entry through the use of counterfeit-proof travel documents, verification of identity through fingerprinting, and so forth, a number of countries have expressed reservations in regard to possible infringements of privacy or even abuses of civil rights stemming from such procedures", in *International migration policies*, Department of Economic and Social Affairs, Population Division, United Nations (ST/ESA/SER.A/161) (New York, 1998), p. 217.

[4] There is no generally accepted definition of the concept of labour trafficking. However, at its Seminar on the International Response to Trafficking in Migrants and the Safeguarding of Migrants' Rights (Eleventh IOM Seminar on Migration, Geneva, 26-28 October 1994), the IOM put forward a definition of this type of illegal migration. According to this definition, the concept of migrant trafficking involves four main elements: first, a trafficker or intermediary who undertakes

Box 4.1

Labour trafficking

Trafficking may be part of a well-organized commercial activity run by large-scale operators with international networks, providing a whole range of services such as securing travel documents (which may often be forged or false), transportation and assistance in border crossing, arranging safe places in transit and finding residences and (illegal or unlawful) employment in the destination country. The operational elements of trafficking, prior to the arrival of trafficked persons in the country of destination, include planning and conspiracy for smuggling, collection of information on travel documents for purposes of producing forged documents or falsification of travel documents, intelligence gathering concerning processing of asylum applications to justify false claims, arranging hideouts for migrants before the arrival of transport and during transit, and camouflaging vehicles and other means of transport to avoid apprehension [...] With sophisticated telecommunications and other means, traffickers can keep in touch with their networks spreading worldwide and command enormous financial resources and operational capability.

Source: B. Ghosh, op. cit., pp. 23-25.

290. The growth of illegal migration and labour trafficking in particular is due to a combination of factors which may be summed up as follows: (a) on the one hand, the pressures to emigrate are strong (natural disasters, famine, demographic growth, economic disparities between countries, violations of human rights, civil war and other armed conflicts, etc.) at a time when whole sectors of the economy of receiving countries[6] are being pushed into instability and

---

to help the would-be migrant cross one or more borders; second, payment made by the would-be migrant (or on his or her behalf) to the trafficker for services rendered; third, the movement itself is illegal and hence involves committing other illegal acts; and fourth, the would-be migrant gives his or her consent — at least formally — to the transaction, in that he or she actually wishes to leave the country of origin.

[5] The WCL indicates the phenomenal increase in the traffic of young children (in particular young girls) in western Africa. These children, who come from countries like ***Benin***, ***Burkina Faso***, ***Nigeria*** and ***Togo***, are transported to other countries in the subregion, like ***Côte d'Ivoire***, ***Congo Brazzaville***, ***Cameroon***, ***Gabon*** and ***Senegal***. This trafficking is not limited to Africa, as it can also be seen in Europe, Asia and Latin America.

[6] Especially those with a high labour density such as construction and public works, the garment industry, hotels and catering, domestic service, agriculture, etc.

flexibility by increasing production constraints and international competition; and (b) on the other hand, faced with economic restructuring and growing social tensions, many countries (and not only traditional countries of immigration) are officially closing their borders to migration for employment and increasingly adopting restrictive laws and regulations.[7]

291. It is this interplay between rejection by the law, on the one hand, and strong economic pull factors encouraging clandestine immigration, on the other, which explains the persistence, and even growth, of illegal migration. Moreover, with the increasing build-up in many countries of legal restrictions on the entry and residence of foreigners, would-be immigrants are compelled to rely on more or less clandestine networks to slip through the net, and these in turn demand increasingly exorbitant fees for their services.[8] The ensuing financial and moral debt (clandestine employment often being presented as a "service rendered") thus traps migrants in a position of dependence, exposing them to unbridled exploitation of their labour in conditions that are close to slavery.

292. Lastly, the Committee draws the attention of governments to the particular vulnerability to exploitation and abuse of women migrant workers,[9] who according to some estimates account for half the entire migrant population worldwide today.[10] No longer only to be found among accompanying family members, women now make up an increasing proportion of migrant workers: for example, nearly half a million Sri Lankan women are working in the Middle East, while there are 12 women for every man among migrants from the *Philippines* to other Asian countries. In some parts of the world,[11] women migrant workers have become a major source of income for their countries of origin on a par with their male counterparts. The Committee notes in particular the increasing tendency to "import" women migrant workers for commercial — including sexual — exploitation through arranged marriages with foreigners or by getting them to sign contracts of employment that look tempting but rarely reflect the real situation. Their vulnerability lies principally in the fact that they are employed abroad and hence outside the legal protection of their country of origin, but is also due to the fact that they often hold jobs for which there is little protection under social legislation: domestic workers,[12] manual workers (in agriculture, factories or export processing zones), hostesses or entertainers in nightclubs or cabarets, etc. Their situation is made worse by the lack of autonomy and the strong relationship of subordination that are typical of the jobs usually held by these workers; added to this is the fact that these women are usually young and poor, living in fear of losing their jobs, having had to leave their families in their countries of origin, do not speak the language of the country of employment, are unaware that they have rights that are being infringed, and usually do not know where to go for help.[13] In these circumstances, the fact that they are in an irregular situation in the country of employment or that they are illegally employed there makes them even more vulnerable to violence or ill-treatment.

---

[7] Although in international law the distinction between migrant and refugee is clear, a certain overlap exists between the reasons which push a migrant or a refugee to leave his or her country of origin which will have some impact on the way in which these categories are treated in practice.

[8] According to the ICFTU study mentioned above, "Phnom Penh has become, over the past years plagued by a huge network of emigration to the *United States*, Europe and *Japan*. Prospective emigrants, the majority of them Chinese, are prepared to pay up to US$45,000 for the tortuous journey to America."

[9] Since the exploitation of child labour goes far beyond labour trafficking, this survey will not address child trafficking, although it is closely linked to the issue of trafficking and sexual exploitation of women migrant workers. On this subject, see L.L. Lim (ed.), op. cit.

[10] See footnote 22 in the Introduction.

[11] The main sending countries of women migrants are *Indonesia*, the *Philippines*, *Sri Lanka* and *Thailand*, while the main destinations are the Gulf States (*Kuwait* and *Saudi Arabia* in particular), *Brunei*, *Hong Kong*, *Japan*, *Malaysia*, *Singapore* and *Taiwan, China*. For further details, see Lin Lean Lim and Nana Oishi: *International labour migration of Asian women: Distinctive characteristics and policy concerns* (Geneva, ILO, 1996).

293. In view of the scale of clandestine migration today and of its impact both on respect for human rights and in economic terms,[14] the Committee can only regret the fact that, by and large, little information has been provided on the extent of this phenomenon in member States.[15] The Committee notes that some governments[16] merely stated that they were little or not at all affected by the phenomenon of clandestine migration or stated that, for example *Finland* and *Kenya*, they had no statistics on the extent of this problem in their country. The Committee also regrets the lack of information on concrete measures taken to combat migration in abusive conditions and illegal employment and on their effectiveness. Although Convention No. 143 does not lay down any specific obligation with regard to combating the exploitation of women migrant workers, the Committee recalls that Article 6 of Convention No. 97 calls on States to apply treatment without discrimination in respect of sex to immigrants lawfully within its territory. It noted with interest the information supplied on this point by some countries[17] but regrets that it was provided essentially by countries of emigration rather than immigration. The Committee accordingly hopes that in future government reports supplied under article 22 of the ILO Constitution will take account of these developments and contain more information on the specific application of the provisions of Conventions Nos. 97 and 143 to women migrant workers.

---

[12] On the situation of domestic workers, see A. Blackett: *Making domestic work visible: The case for specific regulation*, Labour Law and Labour Relations Programme WP.2 (Geneva, ILO, 1998).

[13] IOM studies on this subject have shown that the profile of women migrants from eastern Europe, from which trafficking is on the increase, is markedly different from that of women migrants from developing countries. The former are usually younger (aged between 15 and 25), single and have a substantially higher level of education.

[14] According to a European Commission communication of Apr. 1998 on undeclared labour, the underground economy accounts for between 7 and 16 per cent of gross domestic product (GDP) of the European Union, i.e. between 7 and 19 per cent of all declared jobs. In other words, the "clandestine economy" provides the equivalent of 10 to 28 million full-time jobs, which gives some idea of the huge losses in revenue to the State. The Committee recalls however that, while clandestine immigrants account for a large percentage of undeclared workers, they are not the only ones working illegally.

[15] *Germany* informed the Committee that in 1996 the Federal Labour Office instituted a total of 85,742 violation proceedings on suspicion of illegal employment of foreign workers, that 24,836 fines were imposed and that a total of DM36.8 million in fines and warnings coupled with a fine had been levied on violators. Of the violation proceedings, 8,130 were referred to public prosecutors on suspicion of a criminal offence. *Italy* reported that it had expelled 9,005 clandestine migrants in 1997, which represents a 3.34 per cent increase over 1996, and issued 50,020 expulsion orders.

[16] For example: *Antigua and Barbuda, Australia, Belize, Cyprus, Falkland Islands (Malvinas), Kenya, Luxembourg, New Zealand, Qatar, San Marino, Sri Lanka* (only as regards immigration), *Suriname, Syrian Arab Republic, United Kingdom (Saint Helena)*.

294. This chapter will deal first of all with the minimum standards of protection which should be enjoyed by all migrant workers, irrespective of whether or not they are in an irregular situation, then with migration in "abusive conditions", i.e. involving the illegal recruitment, introduction and placing of workers or misleading propaganda;[18] it will lastly examine illegal employment.

Section I. Minimum standards of protection

295. Convention No. 143 contains a number of provisions intended to ensure that migrant workers enjoy a basic level of protection even when they have immigrated or are employed illegally and their situation cannot be regularized. It is important to emphasize that the Convention does not in any way affect the sovereign right of each member State to allow or refuse to allow a foreigner to enter its territory and that it leaves it to each State to determine the manner in which it intends to organize the potential entry of migrant workers or the refusal of their entry.

---

[17] For example: *Bangladesh* and *Sri Lanka* adopted measures to prohibit the emigration of female nationals to take up jobs as entertainers, which often serve as a cover for prostitution; *Belgium* states that it has amended its regulations on work permits for entertainers, and cabaret performers in particular, with a view to combating certain abuses, including human trafficking; in 1995 the *Philippines* adopted Republic Regulations No. 8042/1995 stipulating that the State will deploy its nationals only to those countries where the rights of Filipino migrant workers are protected, and adopted Department Order No. 32/1996 entitled "Selective deployment of Filipino women workers", the aim of which is to define strategies on the deployment of women workers overseas so that protection is better ensured and job-related risks are minimized. Destination countries are therefore chosen on the basis of the host country laws for foreign workers, mechanisms that allow protection of these workers, bilateral and multilateral agreements and other measures that ensure their protection. This policy also emphasizes non-vulnerable occupations and the phasing out of occupations that expose women to abuse and exploitation; although *Sweden* considers that it is hardly affected by trafficking in women migrant workers, in December 1997 its Minister of Foreign Affairs commissioned a report to the Foundation Women's Forum on the trafficking of women migrant workers in the European Union, with the principal aim of identifying the extent of the phenomenon as well as all the agencies (including NGOs) working against trafficking and providing assistance to victims; the report also makes a number of recommendations; *Thailand* has established an awareness-raising campaign aiming to discourage women from migrating for employment in the domestic sector.

[18] As measures to combat misleading propaganda have been addressed in paras. 214-225, they will be only briefly mentioned in this chapter.

A. Basic human rights

296. Article 1 of Convention No. 143 provides that "each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers". This Article refers to the fundamental human rights contained in the international instruments adopted by the UN in this domain,[19] which include some of the fundamental rights of workers. Some of these fundamental rights have recently been the subject of special consideration in the context of the ILO's principal mandate in the ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference on 18 June 1998, which refers in its preamble to migrant workers as being especially in need of protection. The ILO Declaration lists these rights in paragraph 2 as follows: "(a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation".

297. Article 1 of Convention No. 143 refers to *all* migrant workers, irrespective of their legal status in the country of immigration. The exercise of these basic human rights is not linked to any requirement as to citizenship or legal residence in the country of employment. A distinction may however be drawn between the rights thus protected generally, and those which are laid down in greater detail for regularly admitted migrant workers in Part II of the Convention, which can be accepted separately.

298. The Committee draws the attention of governments — in particular those[20] which state that they are unable to ratify Convention No. 143 because their national legislation does not expressly guarantee equal treatment between nationals and foreigners — to the fact that the difference established by the Convention between the rights recognized for all migrant workers and those recognized only for those in a regular situation under Part II of the instrument lies in the level of commitment required of States (in other words, in the ratification of one or other for both Parts of the Convention). States are called upon to promote equality of treatment and opportunity between national workers and migrant workers legally within their territory through an active policy, which involves the adoption of a number of measures. No such requirement is laid down in Article 1, according to which, the irregular status of a migrant worker does not mean that he or she is devoid of rights.

---

[19] Such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), etc.

[20] For example: *United Kingdom (British Virgin Islands, Isle of Man, Jersey).*

299. Although both countries of origin and countries of employment are called upon to undertake to respect the basic human rights of all migrant workers, the rights to be respected are generally not the same for sending and receiving countries. It is as rare to find general provisions to ensure respect of basic rights of migrants in countries of employment as it is common to find countries of emigration adopting specific measures to protect the human rights of their nationals working abroad. Generally speaking, while some rights are recognized for migrants, this is only the case of those in a regular situation. Migrants in an irregular situation often do not enjoy any rights at all.

300. Virtually all of the governments which provided information on this subject in their reports cited provisions of their Constitution or national legislation guaranteeing respect of basic freedoms and human rights in general terms or offering this protection to residents, or specifically guaranteeing certain rights for the foreigners residing in their territory, with the notable exception of political rights.[21] However, the Committee notes that in the constitutions of many countries, the provisions on equality of treatment generally apply only to citizens.[22] The Constitution of the *United Kingdom (Gibraltar)*, however, guarantees the respect of basic human rights for all persons, irrespective of their status, and the Labour Code of *Togo* applies to all workers, irrespective of their legal status. Other countries merely replied that they had ratified the relevant international instruments, such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African Charter on Human and Peoples' Rights, etc. Lastly, the Committee notes that for *Morocco*, the basic rights referred to in Article 1 include, in particular, the principles enshrined in the basic Conventions of the ILO.

301. The Committee notes with interest the statement of the Government of the *United States*, according to which, in virtue of recent case-law, all foreigners, including irregular workers are considered as "employees" according to the National Labour Relations Act and that, as such, they are protected against unfair labour practices.[23] Although all foreign workers have rights under the NLRA, the remedies available for violation of these rights may be restricted for migrants in an irregular situation.

---

[21] Art. 8b of the Treaty of Maastricht provides for the right of citizens of the European Union residing in a Member State other than that of which they are nationals to vote and to stand as candidates in elections to the European Parliament and in municipal elections in the Member State in which they reside.

[22] For example: *Algeria, Angola, Congo, Egypt, Ireland, Lebanon, United Republic of Tanzania (Zanzibar), Togo.*

[23] Case-law has held that the Fair Labour Standards Act (1938) applies also to irregular migrants in respect of minimum wage and maximum hours. However, numerous types of employment are partially or completely exempt from the scope of this Act, and the Committee notes that these types of employment are those usually taken up by migrant workers: agriculture, fishing, sales and retail employment, etc.

B. Rights arising out of past employment

302. Article 9(1) of Convention No. 143 provides that "without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularized, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards *remuneration, social security and other benefits*". The purpose of Article 9(1) is to ensure that illegally employed migrant workers are not deprived of their rights in respect of the work actually performed. The legislation examined by the Committee does not refer directly to the question of the exercise of rights arising out of past employment of migrant workers in an irregular situation. Although the wording of most provisions of labour law apply to workers without distinction as to nationality, a migrant worker in an irregular situation will find it difficult to claim his or her rights, and in particular to gain access to the courts. In addition to the difficulties inherent in being a foreigner (language barrier, ignorance of procedures, etc.) the migrant's irregular situation constitutes an important obstacle deterring him or her from having recourse to the judiciary, for fear of making his or her situation known to the authorities and hence incurring the risk of being expelled.

303. The Committee notes that although Article 9(1) advocates equality of treatment, it does not specify that such equality is "with nationals". The Committee recalls in this connection[24] that equality of treatment between national workers and foreign workers in a regular situation is the subject of Part II of the Convention, which may be accepted separately. It would seem from the context that Article 9(1) should be understood as requiring that the irregularly employed migrant worker enjoy equality of treatment with regularly admitted and lawfully employed migrants and not with nationals of the country of immigration. Any other interpretation would require States which are not in a position to accept Part II, but could accept Part I, to grant illegally employed migrant workers equal treatment with nationals in respect of rights arising under past employment, including rights in the complex field of social security, even when they do not grant such equal treatment to regularly employed migrant workers.

304. Recognition of the principle that migrant workers in an irregular situation have the right to enjoy rights arising out of past employment in respect of remuneration and social security gives rise to problems in many countries. *Spain*, for example, states that only workers in a regular situation may enjoy the rights arising out of past employment. It would appear from an examination of the reports that recognition of this principle poses more of a problem in the field of social security than in that of remuneration.

---

[24] See para. 260 of the 1980 General Survey.

1. Remuneration

305. Some countries[25] state that violation of the legal provisions on the employment of foreigners results in the nullity of the contract of employment so that the worker has no contractual basis on which to claim, inter alia, unpaid remuneration, while others, such as the *Czech Republic* and *Paraguay*, indicate that the worker is able to recover the remuneration arising out of past employment, either because a contract of employment without a work permit is legally valid or because the legislation expressly provides that the worker has the same claims against the employer as he or she would have had under a valid contract. The Convention does not, however, appear to provide that a worker has claims going beyond the period of actual employment. It would not appear that Article 9(1) was intended to cover matters such as entitlement to a period of notice, which are often the subject of complex legal regulations or judicial decisions, not readily applicable to an irregular situation. Lastly, as mentioned above, the Committee noted that some legislation, such as that of *Mali*, specifies that if the employment is illegal as a result of the employer's negligence, the worker may claim damages.

2. Social security and other benefits

306. The reference in Article 9(1), to rights arising out of past employment as regards social security and other benefits may be considered in connection with Paragraph 34 of Recommendation No. 151, according to which "a migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his stay therein [...] to any outstanding remuneration for work performed, including severance payments normally due" and "in accordance with national practice [...] to compensation in lieu of any holiday entitlement acquired but not used". The extent to which a migrant worker in an illegal situation may be entitled to benefits of this kind, which are not expressly mentioned in the Convention, must be determined by reference to national legislation and the principle of equality of treatment. For example, if in a given receiving country a legally employed migrant worker is entitled to a period of notice, an illegally employed migrant worker should enjoy the same rights in spite of his or her irregular situation. Conversely, an illegally employed migrant worker would only be entitled to such benefits as are accorded to a legally employed migrant worker whose employment may also be terminated without notice.

307. As regards social security benefits, it may be noted that the Convention refers only to social security rights "arising out of past employment". It does not therefore extend to benefits the granting of which is not dependent on a period of employment. Moreover, it may be considered that the provision refers only to the rights which the worker has acquired by virtue of his or her period of employment and by fulfilling the other qualifying conditions required in the case of migrants in a regular situation. The Committee notes that some countries[26] have pointed out that migrant workers in an irregular situation are entitled to employment injury benefits and refers to paragraphs 267 and 268 of its 1980 General Survey on migrant workers. Article 9(1) of the Convention does not, however, appear to be applied if benefits are conditional upon being legally employed or resident in the country, as is the case in *France*, for example,[27] or holding a valid work permit, as is the case in *Lebanon* and the *United Kingdom*.[28] These conditions would deprive Article 9(1) of its principal effect.

---

[25] For example: *Cameroon* (s. 27(3) of the Labour Code), *Republic of Korea* (comprehensive measures for protection of all illegal foreign workers), *Mozambique* (s. 20 of Legislative Decree No. 1/76).

308. The considerations above refer to social security rights arising out of a period of illegal employment. However, Article 9(1) refers to "rights arising out of past employment" in general. In the context of social security, this must be understood, in particular for the purpose of acquiring rights to long-term benefits, as covering also any period of legal employment in the country concerned which may have preceded the illegal employment, as well as past employment in another country which would normally be taken into consideration, on the basis of bilateral or multilateral international agreements, when calculating entitlement to benefits.

309. The requirement of paragraph 2 of Article 9 that in the event of dispute the worker shall have the possibility of presenting his or her case to a competent body does not appear to have given rise to problems in any of the countries referring to this matter, such as *Greece*, for example.[29] The right to initiate legal proceedings or appeal to a competent body on the same basis as nationals exists in all of these countries. In the absence of adequate information, the Committee is unable to assess the practical application of this essential provision. It wishes to emphasize its importance, however, as other sources besides government reports have informed it that once a migrant worker in an irregular situation has been seized by the law enforcement bodies, he or she is often immediately taken to the border without having had the possibility of recovering personal belongings, requesting the payment of wages or lodging an appeal with the judiciary bodies in the country of employment.

---

[26] For example: *Belgium* (the legislation governing employment injury compensation is a matter of public policy and hence mandatory: the nullity of a contract concluded with a worker in an irregular situation cannot be invoked in order to evade payment of compensation. If the employer is not insured, it is the Employment Injury Compensation Fund which pays and subsequently claims from the employer); *Republic of Korea* (under the Industrial Accident Compensation Insurance Act, "illegal" and "unregistered" migrant workers can obtain protection against industrial accidents and against overdue payment under administrative guidance).

[27] In *France* only foreigners legally residing and employed in French territory are entitled to social security benefits.

[28] The *United Kingdom* reported that the extension of social security benefits to irregular and non-regularizable migrant workers is inconsistent with current legislation, which allows for the suspension or disallowal of benefit for the duration of any period of detention as the result of a criminal act, which may include violation of immigration law.

[29] s. 27(4) of Act No. 1975/1991.

C. Cost of expulsion

310. Article 9(3) of Convention No. 143 provides that "in case of expulsion of the worker or his family, the cost shall not be borne by them". A clear distinction should be made between (a) the case where the migrant worker is in an irregular situation for reasons which cannot be attributed to him or her (such as redundancy before the expected end of contract, where the employer failed to fulfil the necessary formalities to engage a foreign worker, etc.), in which case the cost of his or her return as well as the return of family members, including transport costs, should not fall upon the migrant, and (b) the case where the migrant worker is in an irregular situation for reasons which can be attributed to him or her, in which case, only the costs of expulsion may not fall upon the migrant.[30] Few governments, such as the *United Kingdom (Jersey)*, indicated that in all cases of expulsion the costs are covered by the State. Some, such as the *Czech Republic* and *Greece*, indicated that the cost of expulsion primarily fall on the irregular migrant, and only if he or she is incapable of covering the cost does the State assume the responsibility, or turns to the transport company or the employer of the worker concerned.

311. Other governments appear to have taken this provision as covering *all* the costs incurred in the expulsion of a migrant worker in an irregular situation and his or her family to the country of origin. *Lebanon*, for example, requested the Committee to specify which costs should not be borne by the worker in the event of expulsion. In fact, the Convention does not appear to refer to the return travel costs, but only to the *costs of expulsion*, i.e. the costs incurred by a State in ensuring that the clandestine worker leaves the country, for example, the costs of the administrative or judicial procedures involved in issuing an expulsion order or in implementing the order (i.e. the costs incurred by a member State in connection with expulsion, such as escorting the worker and his or her family out of the country). Where the legislation provides that these costs are recoverable from the migrant worker, the Convention is not fully applied.[31] On this point, the Committee refers to its numerous observations[32] on this subject, and in particular its direct requests of 1993 and 1995 addressed to *Norway*, in which it considered that "the costs of surveillance referred to in section 46 of the Immigration Act[33] constitute administrative costs within the context of escorting the migrant worker to the frontier that must be borne by the State which wishes to ensure that the worker and his family actually leave the country following the decision to expel". However, those countries which leave it to the expelled migrant worker to pay his or her own travel costs are not for that reason failing to apply this provision of the Convention. This approach is borne out by the consideration that, if the cost of expulsion included travel costs, the illegal migrant would find himself or herself in a better position than the regularly admitted migrant worker, which might even encourage migrant workers to remain in the country after the expiration of their residence permit in order to be expelled and hence repatriated free of charge.

---

[30] See in this respect Art. 9, Annex II, of Convention No. 97 and paras. 316 and 612-613 below.

[31] For example: *Australia*, s. 210 of the Migration Act 1958 provides that deportees and removees are liable to the Commonwealth (the federal Government) for the costs of their removal or deportation. Costs are defined in s. 207 to mean "in relation to a non-citizen's removal or deportation, the fares *and other costs* to the Commonwealth of transporting the non-citizen and a custodian of the non-citizen from Australia to the place outside Australia to which the non-citizen is removed or deported".

[32] For example: direct requests addressed to *Burkina Faso* (1993, 1995bis), *Cameroon* (1995bis, 1996), *Portugal* (1991, 1993, 1995bis), *Slovenia* (1997).

D. Regularization of the situation

312. Article 9(4) of Convention No. 143 provides that "nothing in this Convention shall prevent Members from giving persons who are illegally residing or working within the country the right to stay and to take up legal employment". Few countries have referred to their practice in regard to legalizing the situation of migrant workers in an irregular situation. In any event, this provision of the Convention is a declaratory one which does not require specific measures to be taken by ratifying States. Recommendation No. 151 suggests that the decision whether or not the migrant worker's situation is to be regularized or not should be taken quickly and that once the worker's position has been regularized, he or she should benefit from all rights provided for migrant workers lawfully admitted within the territory of the member State. The examination of the reports shows that there do not appear to be any difficulties in the application of the Recommendation on these points.

313. The Committee notes that migrant workers are sometimes allowed to be employed illegally for a number of years in a country, with no decision being taken relating to their status. This leaves them in a situation of permanent uncertainty in which they are far more vulnerable to abusive conditions. In order to avoid such situations, the Committee emphasizes once more the importance of rapid detection of migrant workers in an irregular situation and a decision as to whether to regularize them. Illegal employment of migrant workers partly results from a certain tolerance by States. The consequences of the slowness of existing proceedings, and the incapacity of States to effectively detect whether migrants are illegally employed in their territory ought not to fall exclusively upon migrant workers in an irregular situation. Although this is not explicitly covered in these instruments, the Committee considers that as a matter of equity in such cases, the State concerned should examine, on a case-by-case basis, the situation of each migrant worker in an irregular situation who has been living for a certain length of time in the country, and consider the possibility of delivering a residence permit.

---

[33] The Government had stated in its report that the cost of procedures leading up to the expulsion order are *not* borne by the migrant worker or his family, *except* in cases in which costs of surveillance are incurred because the foreign national does not leave the country voluntarily. In this case, the immigration authorities must have clear indications that the foreign national in question will unlawfully evade the implementation of the decision to expel.

314. It is clear from the reports that some States[34] regularly launch regularization campaigns in order to make a fresh start and eradicate clandestine migration and illegal employment once and for all, as well as for humanitarian reasons.[35] In some cases the intention is to cut through the legal Gordian knots in which some clandestine migrants can be neither expelled nor regularized, as is the case in *France*, for example; or to deal with unforeseen situations, such as that described by *Greece*, which explained to the Committee that in order to cope with the huge wave of clandestine migration from neighbouring countries (*Albania, Bulgaria, Poland* and the countries of the former *USSR*) which it is now experiencing, the Government has had to adopt two Presidential Decrees temporarily legalizing the situation of these foreigners by issuing them residence permits under certain conditions, which entitle them to the insurance benefits provided for in legislation.

Amnesties

315. Although Article 9(4) of Convention No. 143 talks of regularization, the Committee has noted that some countries undertake what is termed as "amnesty". An amnesty annuls legal consequences of the infractions which the migrant has committed by entering or working illegally in the country. Thus, as is the case in *Saudi Arabia*, which recently announced an amnesty in order to allow migrants in an irregular situation in the country to leave without fear of punishment. Elsewhere, often an amnesty is the first step towards regularization; thus in the *United States*, a recent amnesty began on 19 November 1997 when nationals of *Cuba* and *Nicaragua* who had lived in the *United States* for at least two years were amnestied. This Act also allowed nationals of *El Salvador, Guatemala*, the former *USSR* and some Eastern European countries to request suspension of expulsion orders under the more flexible regulations which were in force before the adoption in 1996 of the Illegal Immigration Reform and Immigrant Responsibility Act. Since March 1996 the Government of *Germany* has also set up an amnesty programme to legalize the status of asylum seekers residing in *Germany* whose application was submitted at least five years earlier. The *Philippines* also established an amnesty in 1995.[36]

---

[34] For example: *Argentina, Belgium, Costa Rica, France, Greece, Italy, Republic of Korea, Malaysia, Mexico, Netherlands, Portugal, South Africa, Spain, United States, Venezuela.*

[35] These sometimes involve workers in an irregular situation who have been in their territory for many years and have brought up families which are completely integrated in the society of the country of employment.

[36] Act on the Social Integration of Foreigners, No. 7919, 1995.

Section II. Migration in abusive conditions

316. The subject of migrant workers who are in an irregular situation or illegally employed is dealt with essentially by Convention No. 143 (Part I). The 1949 instruments addressed the matter indirectly, first by requiring States to take appropriate steps against misleading propaganda relating to emigration and immigration, then by recognizing that a migrant in an irregular situation should have the right not to bear the cost of his or her return and that of family members — provided that the migrant is not responsible for this situation.[37] Recommendation No. 86 also contains provisions to ensure "as far as possible" that a migrant who has been regularly admitted to the territory of a Member is not removed from its territory on account of a change in his or her situation for which the migrant is not responsible for example a deterioration in the state of the employment market in the country of employment.

317. Only Part I of Convention No. 143, entitled "Migrations in abusive conditions", deals specifically with clandestine or illegal migration and illegal employment of migrant workers. Under its provisions, States for which this Part of the Convention is in force shall take measures to *detect, eliminate* and *apply sanctions* for clandestine movements of migrants in abusive conditions and illegal employment of migrant workers, on the one hand, and, on the other, provide a *minimum level of protection* to workers in an irregular situation.

Box 4.2

International migration and development

Bases for action

International economic, political and cultural interrelations play an important role in the flow of people between countries, whether they are developing, developed or with economies in transition. In its diverse types, international migration is linked to such interrelations and both affects and is affected by the development process. International economic imbalances, poverty and environmental degradation, combined with the absence of peace and security, human rights violations and the varying degrees of development of judicial and democratic institutions are all factors affecting international migration. Although most international migration flows occur between neighbouring countries, interregional migration, particularly that directed to developed countries, has been growing. It is estimated that the number of international migrants in the world, including refugees, is in excess of 125 million, about half of them in the developing countries. In recent years, the main receiving countries in the developed world registered a net migration intake of approximately 1.4 million persons annually, about two-thirds of whom originated in developing countries.

(continued...)

---

[37] See paras. 310-311 and 612.

(continued...)

Orderly international migration can have positive impacts on both the communities of origin and the communities of destination, providing the former with remittances and the latter with needed human resources. International migration also has the potential of facilitating the transfer of skills and contributing to cultural enrichment. However, international migration entails the loss of human resources for many countries of origin and may give rise to political, economic or social tensions in countries of destination. To be effective, international migration policies need to take into account the economic constraints of the receiving country, the impact of migration on the host society and its effects on countries of origin. The long-term manageability of international migration hinges on making the option to remain in one's country a viable one for all people. Sustainable economic growth with equity and development strategies consistent with this aim are a necessary means to that end. In addition, more effective use can be made of the potential contribution that expatriate nationals can make to the economic development of their countries of origin.

[...]

It is the right of every nation State to decide who can enter and stay in its territory and under what conditions. Such right, however, should be exercised taking care to avoid racist or xenophobic actions and policies. Undocumented or irregular migrants are persons who do not fulfil the requirements established by the country of destination to enter, stay or exercise an economic activity. Given that the pressures for migration are growing in a number of developing countries, especially since their labour force continues to increase, undocumented or irregular migration is expected to rise.

Actions

Governments of countries of origin and of countries of destination should seek to make the option of remaining in one's country viable for all people. To that end, efforts to achieve sustainable economic and social development, ensuring a better economic balance between developed and developing countries and countries with economies in transition, should be strengthened. It is also necessary to increase efforts to defuse international and internal conflicts before they escalate; to ensure that the rights of persons belonging to ethnic, religious or linguistic minorities, and indigenous people are respected; and to respect the rule of law, promote good governance, strengthen democracy and promote human rights. Furthermore, greater support should be provided for the attainment of national and household food security, for education, nutrition, health and population-related programmes and to ensure effective environmental protection. Such efforts may require national and international financial assistance, reassessment of commercial and tariff relations, increased access to world markets and stepped-up efforts on the part of developing countries and countries with economies in transition to create a domestic framework for sustainable economic growth with an emphasis on job creation. The economic situation in those countries is likely to improve only gradually and, therefore, migration flows from those countries are likely to decline only in the long term; in the interim, the acute problems currently observed will cause migration flows to continue for the short-to-medium term, and governments are accordingly urged to adopt transparent international migration policies and programmes to manage those flows.

[...]

(continued...)

(concluded...)

Governments of countries affected by international migration are invited to cooperate, with a view to integrating the issue into their political and economic agendas and engaging in technical cooperation to aid developing countries and countries with economies in transition in addressing the impact of international migration. Governments are urged to exchange information regarding their international migration policies and the regulations governing the admission and stay of migrants in their territories. States that have not already done so are invited to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Source: Report of the International Conference on Population and Development, Cairo, 5-13 September 1994, op. cit., Ch. X.

A. Definitions

1. Forms of migration addressed

318. Various terms are used in the Convention: "migrations in abusive conditions", "clandestine movements of migrants", "illicit or clandestine movements of migrants for employment" and "workers who have immigrated in illegal conditions". It would seem that a distinction is made between (a) *clandestine migration*, in which the controls on exit from the country of emigration and/or entry into the country of immigration are evaded, for example by crossing the border at an unauthorized point, and (b) *illegal or illicit migration*, in which the exit or entry may be open and apparently lawful but the migrant conceals his or her true intention. This is the case, for example, of persons who travel as tourists and then take up unauthorized employment or those who are admitted as seasonal workers or with a work permit for a limited duration and stay on to work after their authorization has expired. The Committee considers, however, in the light of the legislation reviewed, that this distinction between clandestine and illegally employed migrants is not very relevant since the migrant worker runs the risk of being expelled in both cases.

2. Abusive conditions

319. Under Article 2(1) of Convention No. 143, migration in abusive conditions includes situations in which migrants are subjected during their journey, on arrival or during their period of residence and employment to "conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations". It follows from this definition that (a) the abusive conditions referred to are those which are prohibited by the relevant international instruments[38] or by national laws or regulations; (b) while the Convention is aimed primarily against the organized movement of migrant workers by labour traffickers, it also applies to illegal or clandestine migration by individuals acting on their own or in small groups; and (c) clandestine or illegal movements of migrants for employment that take place in conditions that are *not* abusive within the meaning of Article 2 are not covered by the scope of this Convention. The Convention can thus be considered as aiming to prevent *all* forms of illegal or clandestine migration for employment in so far as they take place in abusive conditions. The Committee is aware however that, if States are to combat effectively the clandestine migrations prohibited in Article 2(1) of the Convention, they must combat *all* clandestine migration, and not only that which is abusive under the terms of the Convention. In practice, the line between migrations in abusive conditions and migrations in illegal conditions is very difficult to draw with any precision For a more detailed picture of the "abusive conditions" prohibited by the Convention, governments are referred to the following (non-exhaustive) list of malpractices in the field of migration identified by the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, held in April 1997.

---

[38] The preparatory work for the adoption of Convention No. 143 shows that participants did intend to refer essentially to *ratified* international instruments. However, the Committee considered in its 1980 General Survey (para. 188) that account *may* also be taken of other international instruments which States agree to respect even if they have not ratified them.

Box 4.3

Abusive practices in the field of migration

Malpractices exist where the treatment of migrant workers and members of their family is not in accordance with national laws and regulations or ratified international standards and where such treatment is recurrent and deliberate. Exploitation exists where, for example, such treatment incurs very serious pecuniary or other consequences; migrants are specifically subjected to unacceptably harsh working and living conditions or are faced with dangers to their personal security or life; workers have transfers of earnings imposed on them without their voluntary consent; candidates for migration are enticed into employment under false pretences; workers suffer degrading treatment or women are abused or forced into prostitution; workers are made to sign employment contracts by go-betweens who know that the contracts will generally not be honoured upon commencement of employment; migrants have their passports or other identity documents confiscated; workers are dismissed or blacklisted when they join or establish workers' organizations; they suffer deductions from wages without their voluntary consent which they can recuperate only if they return to their country of origin; migrants are summarily expelled as a means to deprive them of their rights arising out of past employment, stay or status.

Source: *Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration*, op. cit., Annex III, para. 1.2.

B. Detection and elimination of migration in abusive conditions

320. Article 2(1) and Article 3 of Convention No. 143 require each Member for which this Convention is in force, first to "systematically seek to determine whether there […] depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment" to the abusive conditions defined above. Second, each Member shall "adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members [...] to suppress clandestine movements of migrants [...] and [...] against the organizers of illicit or clandestine movements of migrants [...] in order to prevent and to eliminate the abuses" prohibited by relevant international multilateral or bilateral instruments or agreements, or national laws or regulations.

321. The measures to be taken to achieve these objectives are set forth in the Convention: (a) first, to establish systematic contact and exchange of information with other States (Articles 3 and 4); (b) to consult representative organizations of employers and workers (Articles 2, 4 and 7); (c) to prosecute authors of manpower trafficking whatever the country from which they exercise their activities (Article 5); and (d) lastly, to define and apply administrative, civil and penal sanctions (which include imprisonment in their range) in respect of the organization of movements of migrants for employment in abusive conditions and in respect of knowing assistance to such movements, whether for profit or otherwise (Article 6).

1. General measures

322. The Committee notes that very few countries have provided information in their reports on specific measures they have adopted to *systematically* seek to determine whether migration for employment takes place under abusive conditions in their territories. Generally speaking, reports tend to refer to police laws governing the entry and residence of foreigners (which are not primarily aimed at detecting migrants in an irregular situation) rather than a national immigration policy in the true sense of the term. The Committee also notes that this information is more concerned with combating clandestine or illicit migration in general than suppressing clandestine or illicit migration taking place in *abusive* conditions, which is the subject of Part I of Convention No. 143.

(a) Measures taken to detect migration in abusive conditions

323. As recalled above, Article 2(1) of Convention No. 143 requires States to take the measures they deem appropriate to systematically seek to determine whether there depart from, pass through or arrive in their territory any movements of migrants for employment under abusive conditions. This does not mean that States are required, as the *Netherlands* appear to have interpreted this Article to mean, to carry out regular and periodic checks of all persons whose physical appearance seems to indicate that they are foreigners, in order to determine whether they are legally resident and employed. The *United Kingdom* has stated that it is unable to accept a commitment to impose the type of surveillance envisaged in Article 2(1), while the Government of *Luxembourg* did not consider it necessary to set up a system of systematic control given that few abuses have been reported up to now. In this respect, the Committee emphasizes once again that it is for each State to take the steps it considers to be appropriate for the effective detection of clandestine or illicit migration in abusive conditions, whether departing from, passing through or arriving in its territory.

324. In examining the reports, the Committee has identified two tendencies shared by the large majority of States with respect to detection of clandestine movements of migrants: first, police checks have been stepped up considerably, both at borders and spot-checks within the country's borders, and second, transport companies (including airlines and land and sea transport) are increasingly held responsible for verifying passengers' travel documents and residence permits.[39] More specifically, the Committee has noted the following measures taken to detect clandestine or illicit migration: the introduction of special counters to detect "clandestine departures for employment" at airports;[40] systematic search of means of transportation likely to be clandestinely carrying emigrants;[41] mandatory communication of passenger lists to immigration officials;[42] special surveillance of regions with a high proportion of foreign workers[43] or of travellers arriving from ports identified as potential points of illegal departure for would-be immigrants;[44] cooperation of employment services, which are required to check the validity of foreign workers' residence and work permits when registering them,[45] of workers' organizations,[46] of hotels and boarding houses;[47] the use of information technology;[48] and the establishment of special units to combat illicit practices relating to the entry, residence and exploitation of migrants.[49]

---

[39] Simultaneously with increasing the severity of sanctions against transport companies, a number of States (*Canada, Germany, Netherlands*) have elaborated training programmes targeted at airline company staff and immigration officials, or have created official liaison posts in sending countries. See *International migration policies*, op. cit., p. 215.

[40] *Sri Lanka*.

[41] For example: *Antigua and Barbuda, United Republic of Tanzania (Zanzibar), Zambia*.

[42] For example: *Cyprus, Dominica, Israel, Kenya, United Republic of Tanzania (Zanzibar)*.

[43] For example: *Italy, Uruguay*.

[44] For example: *New Zealand*.

[45] For example: *France*.

[46] For example: *Czech Republic, Ghana*.

[47] For example: *Argentina, Greece, Kuwait, Malaysia, Paraguay, Venezuela*.

[48] For example: in the *Czech Republic* the Government is currently setting up a system to centralize registration of all foreigners residing in its territory, which will also include a list of all the bilateral agreements concluded by this country with the governments of countries whose nationals are interested in coming to work in the *Czech Republic*; in *Switzerland* the Central Register of Foreigners has been computerized, enabling the different authorities, including the police, to check rapidly whether foreigners are legally resident in the country; the countries of the European Union that have signed the Schengen agreements have adopted the Schengen Information System (SIS): a foreigner whose name is entered in this database by any of the States parties will be refused a visa to enter the other Member States.

(b) *Measures taken to prevent and eliminate migration in abusive conditions*

325. Apart from the nearly universal (with a few exceptions[50]) obligation for all foreigners intending to stay in a country other than their own to obtain a visa,[51] virtually all the countries that submitted reports, both countries of emigration and countries of immigration, consider that the best means of preventing or eliminating illicit or clandestine movements of migrants for employment — including those taking place under abusive conditions — is to adopt and ensure strict compliance with appropriate measures governing the *recruitment* of these workers, their *departure* from the country of origin and their *entry* into and *placement* in the country of employment, i.e. measures such as those envisaged by Convention No. 97 and described in paragraphs 131-288 of this survey. Although the choice of means of recruitment does not really depend on the distinction between country of emigration and country of employment, the perspective will be different for these two types of country, since what is seen as recruitment by the country of employment is considered to be placement by the migrant's country of origin. A difference in approach will inevitably result.

326. The principle laid down by Convention No. 97 with regard to recruitment of foreign workers is that the public employment services and other official bodies of both the sending and the receiving country should be involved.

---

[49] For example: *Australia* (one of the prominent roles of the Department of Immigration and Multi-cultural Affairs is detecting illegal immigration); *France* (in 1997 the Government set up a national commission and departmental commissions to combat illegal employment; in 1996 it established the Central Office for the Suppression of Irregular Immigration and Employment of Undocumented Foreigners; and in 1994, a central directorate for immigration control and combating employment of illegals within the general directorate of the national police was created; etc); *Greece* (under s. 5 of Act No. 1975/1991, the Government has set up special police units to combat clandestine immigration along its land borders); *Philippines* (establishment in 1995 of the National Committee on Illegal Entrants); *Poland* (establishment in 1997 of the Interministerial Team for Migration Issues, whose tasks include putting forward recommendations on measures to combat negative phenomena linked to migration, in particular illegal immigration); *Qatar* (a department has been set up within the Ministry of Labour with special responsibility for controlling the activities of private recruitment agencies).

[50] This obligation has generally been lifted in regional groupings; for example, European Union nationals are exempt from the obligation to obtain a visa for short stays in European Union Member States. The same applies to nationals of the Economic Community of West African States (ECOWAS) *(Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo)*.

[51] In some cases, States have had recourse to a visa system in order to respond in a flexible way to changes in illegal migration flows. For example, after having suspended the visa requirement for nationals of *Chile* in 1993, *Canada* announced the following year that it was reintroducing the visa obligation for Chilean citizens, notably due to the large number of non-genuine requests for asylum being made by Chilean nationals. In mid-1996, the *United States* abolished the visa requirement for Argentinian nationals as the majority of Argentinian visitors to the *United States* had not overstayed the validity of their visas. See *International migration policies*, op. cit., p. 214.

However, except in cases where labour migration is governed by bilateral agreements between the sending and the receiving country,[52] public employment services currently play a small and diminishing role in the recruitment and placement of migrant workers. For example, the recruitment and placement of the millions of South Asian and South-East Asian migrants employed in the Middle East are not governed by any such agreement. In fact, nearly 80 per cent of migration to the Gulf States is currently handled by private recruitment agencies.[53] There are few countries today, such as *Cameroon, Croatia, Lithuania* and *Luxembourg*,[54] where the recruitment of foreign workers is the sole prerogative of the public authorities, or where there are no private recruitment agencies in place[55] or they are strictly prohibited, for example in *Greece* and *San Marino*. The ILO instruments were drafted with migrations organized by the State or by the employer in mind, rather than spontaneous individual migration. However, the terms of the annexes to Convention No. 97 are sufficiently flexible to allow more than one form of recruitment. As explained in paragraphs 188-189, direct recruitment by the prospective employer or his or her representative or by private employment agencies may be authorized by national laws or regulations or a bilateral agreement, subject to supervision by the public authorities. The adoption by the International Labour Conference of the Private Employment Agencies Convention (No. 181) in June 1997, revising the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), which had aimed at progressively eliminating for-profit fee-charging employment agencies, marks member States' recognition of the role that these agencies can play in a well-functioning labour market, provided they are closely supervised by the public authorities. In view of the growing market share of private employment agencies in the recruitment, introduction and placement of migrant workers and the fraudulent and abusive practices which are often imputed to them, any policy to prevent and eliminate clandestine migration in abusive conditions (pursued by both sending and receiving countries) must take these developments into account and accordingly focus on supervision of these agencies and the definition of appropriate sanctions.[56]

---

[52] For example: the bilateral agreement between *Turkey* and *Germany* under which recruitment is carried out solely by the Turkish Employment Service and placement by the German Employment Service; the intergovernmental agreements concluded between the countries of the Caribbean Community (CARICOM) *(Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago)* on the one hand and *Canada* and the *United States* on the other, under the US Farm Work Program, the US Hotel Workers Program and the Canadian Caribbean Seasonal Agricultural Workers Program, under which nationals of CARICOM are temporarily employed in *Canada* and the *United States* every year; and the Agreement on the Employment of Croatian Workers in Germany, signed on 11 July 1992 between the Federal Labour Office of *Germany* and the Croatian Employment Office, under which Croatian nationals, most of whom are women (72.69 per cent), go to work in Germany for three months every year.

[53] "Were it not for recruitment agents, overseas employment promoters, manpower suppliers and a host of other legal and illegal intermediaries, Asian labour migration since the mid-1970s would not have reached such a massive scale", Lim and Oishi, op. cit., p. 4.

[54] In *Croatia*, only the Croatian Employment Office is competent to recruit foreign workers; in *Lithuania* it is the National Labour Exchange while in *Luxembourg* it is the employment administration.

[55] For example: *Antigua and Barbuda, Cape Verde, Central African Republic, Falkland Islands (Malvinas), Syrian Arab Republic* and *United Kingdom (British Virgin Islands)*.

327. In its review of the legislation of countries concerning the prevention and elimination of migration in abusive conditions, the Committee noted the case of one country, *Antigua and Barbuda*, whose legislation provides that where the conditions of work of migrant workers in a particular country of immigration are known to be unsatisfactory, a ban on emigration of its nationals to that country may be applied. Similarly, faced with abuses inflicted on their nationals abroad and large numbers of complaints, some countries[57] have decided to ban all recruitment of their nationals for certain types of work in these countries; while others[58] have imposed special conditions for obtaining authorization to leave the national territory, with the aim of protecting certain categories of migrants. Applying provisions prohibiting persons from leaving the national territory may run counter to article 12, paragraphs 2 and 3, of the International Covenant on Civil and Political Rights, which provides that "everyone shall be free to leave any country, including his own" and, in the specific case of migrants for employment, to the provisions of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in so far as the categories in question are defined in terms of one of the grounds of discrimination set forth in Article 1(1)(a) of this instrument (such as sex, for example). Some of the legislative provisions examined by the Committee should be reviewed in the light of the principles of necessity, non-discrimination and proportionality: for example, restrictions imposed upon certain persons considered to be unsuitable for emigration or immigration because they are likely to commit acts contrary to the dignity of the State or violating national policy,[59] or because they are disabled or homosexual[60] or because they have a criminal record,[61] etc.

---

[56] See in this connection paras. 171-187 above and the Guidelines on special protective measures for migrant workers recruited by private agents.

[57] For example: the *Philippines* decided to prohibit the emigration of its nationals to take up domestic work in *Saudi Arabia* in 1982 and *Singapore* in 1987 but had to lift the ban in view of these two countries' reaction. The *Philippines* then decided in 1988 to ban all emigration of domestic workers to any country pending the results of an in-depth study on the conditions of work applied in the main countries receiving this category of migrant workers in Asia and the Middle East, with a view to concluding bilateral agreements with all of these countries. This general ban was lifted by the *Philippines* without the Government having concluded bilateral agreements with all of the countries concerned; *Sri Lanka* prohibited the emigration of its women migrant workers to *Lebanon* until the conclusion of an agreement between the two countries relating to the minimum wage, transfer of earnings and savings of migrant workers, free meals, freedom of movement, etc. For further details see L. Gulati: *Women migrant workers in Asia: A review*, Asian Regional Programme on International Labour Migration (New Delhi, ILO-UNDP, 1993).

[58] For example: until 1991 *Bangladesh* required women domestic workers seeking employment abroad to be accompanied by their husbands; *Ghana* set down the principle that no one aged under 18 could be recruited to work abroad; *Indonesia* decided that its women nationals had to be aged at least 22 years in order to leave the country to take up jobs as domestic workers; the age required by *Pakistan* for this type of employment is 35 years.

328. Most member States still see employment authorization systems as the main means of combating abusive practices. Hence most of the countries examined require would-be emigrants to go through the system of overseas recruitment organized by the public authorities of the sending country, or at least to obtain authorization to leave the territory to seek employment[62] and/or, if they do seek the services of private recruitment agencies, to prove to the competent authority of the sending country that they hold a work permit or entry visa authorizing them to work in the country to which they wish to immigrate, or a work contract, as in *Congo* for example, or a visa authorizing them to work in the country of employment, as in the case in *China* for example. Some countries of emigration are very vigilant; *Pakistan*, for example, requires that terms and conditions of offers of employment be examined by specialized agencies (in this case by the Bureau of Emigration and Overseas Employment and the Protectorate of Emigrants) and that the validity of these offers be attested by their embassies in the country where the offer of employment was made. Most countries[63] require the express authorization of the employment service or ministry of labour before performance of the contract of employment can begin, with some exceptions (in particular for nationals of regional blocs, such as CARICOM or the European Union); another prerequisite is the conclusion of an agreement with the sending country.

329. By regulating and supervising conditions of departure and arrival of migrant workers, countries hope to prevent and eliminate clandestine movements of migrants, including migration in abusive conditions. That fraud and malpractices in the recruitment of migrant workers still persist shows how difficult it is to mitigate the impact of market forces[64] on migration processes by relying entirely on the adoption of laws or regulations. The practical problems of countries which have large land and sea borders was mentioned by one country, *Yemen*.[65]

---

[59] For example: *Republic of Korea* (s. 3(8) and (9) of the Emigration Act, as amended on 14 Dec. 1991).

[60] For example: *Trinidad and Tobago* (s. 8(1)(c) and (e) of Act No. 41/1969).

[61] For example: having noted in a direct request of 1995 (reiterated in 1997) the wide discretion vested in the Minister with regard to authorization to emigrate — under s. 4(2) and (3) of the Recruitment of Workers Act, No. 39/1993 — the Committee suggested that the Government of *Mauritius* envisage repealing this section when it next revises the Act.

[62] For example: *Albania, Belarus, Central African Republic, India, Jamaica, Republic of Korea, Pakistan, Sri Lanka, Viet Nam.*

[63] For example: *Angola, Antigua and Barbuda, Austria, Barbados, Bahrain, Benin, Bulgaria, Burkina Faso, Cameroon, Central African Republic, Congo, Côte d'Ivoire, Croatia, Egypt, Germany, Ghana, Greece, Italy, Jamaica, Jordan, Kyrgyzstan, Lebanon, Mali, Mauritius, Morocco, Mozambique, New Zealand, Pakistan, Papua New Guinea, Philippines, Romania, Saudi Arabia, South Africa, Suriname, Thailand, Tunisia, Togo, Viet Nam, Zimbabwe.*

[64] See paras. 290-291.

2. *Collaboration between States*

330. Like the 1949 instruments, Convention No. 143 seeks to promote cooperation between States.[66] In order to combat effectively clandestine migration in abusive conditions, measures need to be adopted at the national level; however, since illicit labour trafficking is often a criminal activity organized on an international scale, it also calls for international cooperation[67] and the involvement of all the countries concerned — whether sending States, transit States or States of arrival of migrant workers in an irregular situation. The collaboration between States referred to in Convention No. 143 (as in Convention No. 97) is not (unless otherwise specified) contingent on ratification of these instruments by other States. Subject to the usual reservations, a State which has ratified one or both Conventions undertakes to cooperate, without there being any reciprocal obligation on the part of the other State(s), which is prompted only by the free and sovereign will to respond to the desire to cooperate.

331. Under the terms of the Convention, this collaboration consists of adopting measures: (a) to suppress clandestine movements of migrants for employment and illegal employment (Article 3(a)); (b) against the organizers of illicit or clandestine movements of migrants for employment and against those who employ workers who have immigrated in illegal conditions (Article 3(b)); (c) for systematic contact and exchange of information (Article 4); and (d) for the purpose of ensuring that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities (Article 5).

332. National legislation does not normally lay down measures calling for cooperation between States, with the notable exception of countries belonging to the same regional grouping.[68] In this respect, the Committee notes the very comprehensive Recommendation adopted by the European Union (dated 27 September 1996) on combating the illegal employment of third-country nationals.[69] In fact, collaboration between countries in combating migration in abusive conditions and against the organizers of illicit or clandestine movements of migrants for employment takes place essentially through the conclusion of bilateral or multilateral agreements between the countries concerned.[70] Some governments, such as that of *New Zealand*, refer in their reports to the existence of collaboration between States without giving any further information, while others, such as that of *Switzerland*,[71] mention bilateral or multilateral agreements; however, very little information is provided on international cooperation specifically related to combating clandestine or illicit movements of migrants.[72] The Committee notes with interest the activities of the Mexico-United States Binational Commission, which, although not dealing exclusively with clandestine movements of migrants or the illegal employment of migrants, may provide inspiration for other inter-State cooperation.[73] Some governments, such as those of *Australia* and the *Falkland Islands (Malvinas)*, have stated that although there is no formal machinery for cooperation, they are prepared to respond to any request for information submitted by another State. In these conditions, it is difficult to assess the extent to which this aspect of the Convention is in fact implemented by member States.[74]

---

[65] "*Yemen* has extensive land and sea borders. This geographical situation enables the easy entry and departure of persons in and out of the country and makes it difficult for governmental authorities to regulate the situation."

[66] Under Art. 1 of Convention No. 97, the first area of cooperation between States is the exchange of information on national policies, laws and regulations relating to emigration and immigration, migration for employment and the conditions of work and livelihood of migrants for employment. On this point, see paras. 207-213 above.

[67] "Trafficking cannot be tackled effectively without a multidisciplinary and coordinated approach which involves all concerned players — NGOs and social authorities, judicial, law enforcement and migration authorities — and which involves both national and international cooperation. The recommendations from the Conference point to a lead responsibility for member States, because many issues either need to be or can best be tackled at national level. However, the transfrontier nature of the issues also requires action at European Union level: firstly by initiating actions at European level or by complementing national actions; secondly through Community cooperation with third country partners" (conclusion of the EU Conference on Trafficking in Women, held in Vienna by the European Commission in 1996).

---

[68] For example: the North American Agreement on Labor Cooperation, concluded in Sep. 1993 between the Governments of *Canada*, *Mexico* and the *United States*, provides for such cooperation and exchange of information at different political or administrative levels; as does the Supplementary Protocol adopted by the Economic Community of West African States, setting forth a code of conduct for the application of the Protocol on the free movement of persons, the right of residence and settlement, signed on 6 July 1985, Title V of which relates to subregional cooperation with a view to reducing and eliminating clandestine migration.

[69] The Recommendation applies to third-country nationals, except for family members of citizens of the European Union, nationals of member States of the European Free Trade Association (EFTA) party to the Agreement on the European Economic Area and their family members; third-country nationals in a situation governed by Community law; third-country nationals whose status is covered by a bilateral or multilateral agreement. Third-country nationals wishing to work in the territory of a member State must be in possession of the authorizations to reside and to work required by the legislation of the member State concerned. Illegal employment of workers, encouraging, facilitating or promoting illegal employment, and illegal trafficking in labour should give rise to the imposition of criminal and/or administrative penalties in accordance with the law of the member State concerned. Penalties must be effective, dissuasive, appropriate and proportional to the seriousness of the offences committed. They should permit the elimination of added profits or other advantages obtained by employers as a result of the offences committed. Member States should adopt the necessary measures to coordinate the activities of the competent services in combating illegal employment and exploitation of third-country nationals. Both bilaterally and within the Council, member States should exchange information with regard to combating the illegal employment of third-country nationals and organized networks trafficking in labour.

[70] For example, the Agreement by exchange of letters between *France* and *Morocco* concerning the movement of persons, signed on 10 Nov. 1983 (and confirmed on 25 Feb. 1993) provides that the Moroccan authorities shall take measures to inform would-be emigrants and take steps to prevent Moroccan nationals likely to try to establish residence in France in irregular conditions from setting off for France; the Mutual Administrative Assistance Agreement on Customs, Trade and Immigration between the *People's Republic of Benin*, the *Republic of Ghana*, the *Federal Republic of Nigeria* and the *Republic of Togo* of 10 Dec. 1984, s. 14(3) of which provides that the contacting parties undertake to inform their citizens on the need to conform to the requirements for entering the territory of member States; the Agreements of 1992 and 1993 concluded between *Morocco* and *Portugal* concerning the readmission of foreigners in an irregular situation.

[71] *Switzerland* has stated that it cooperates with other countries in combating clandestine immigration, in particular through participation in the work of the Budapest Group and in the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia.

333. Collaboration between States under the Convention does not only apply to the States of departure and arrival of workers who immigrate in illegal conditions, but also involves transit States. The latter are to adopt the same measures as the former, i.e. the *detection* of illicit movement of migrants from their territory, the adoption of measures to *suppress* them and the application of *sanctions* in cases of abuse. Government reports do not mention measures taken by transit States to combat migration in abusive conditions. *Romania* has merely expressed the apprehension, faced with increasing numbers of persons entering its territory illegally, that it will become a country of temporary immigration. The *Czech Republic* has stated that since the political changes that occurred in 1989 it has become a transit country for large numbers of would-be migrants seeking to immigrate clandestinely to West European countries, and to *Germany* in particular. Although this was not specifically stated, it may be assumed that the decision to centralize and computerize the registration of all foreigners residing in its territory is one of the measures adopted by this country to remedy this situation.

334. Under Article 5 of Convention No. 143, one of the purposes of international collaboration in combating migrations in abusive conditions is that "the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities". The reference to Articles 3 and 4 makes it clear that the problem of prosecuting authors of manpower trafficking is among those that should be solved through collaboration between States, as pointed out by *Australia*,[75] and through systematic contact and exchange of information. The aim of this provision is, in fact, for States to give each other the necessary assistance to ensure that authors of manpower trafficking may be prosecuted under an appropriate jurisdiction.

---

[72] According to the Trade Union Association of Estonia, cooperation between the authorities of their country and neighbouring countries has not been very effective.

[73] See *Binational study on migration between Mexico and the United States* (Commission on Immigration Reform/Secretaría de Relaciones Exteriores, Mexico, 1997).

[74] For example: *Burkina Faso*, which has signed bilateral agreements with, inter alia, *Côte d'Ivoire* (Agreement of 9 Mar. 1961 concerning the conditions of recruitment and employment of workers from Upper Volta [Upper Volta changed its name to Burkina Faso on 4 Aug. 1984] in Côte d'Ivoire) and *Gabon* (Agreement of 13 Aug. 1973 concerning technical cooperation in the field of manpower), states in its report that serious difficulties have arisen in the application of these two agreements: "there is no follow-up by the competent services of the two countries, workers continue to emigrate to these countries and to work there without any control. Although the agreements have not been denounced by the parties, Gabon has unilaterally decided to control foreign manpower in its territory by obliging all migrants from Burkina Faso wishing to work and stay in Gabon to pay a security of 500,000 CFA francs. Any worker from Burkina Faso who is unable to pay this sum is automatically expelled. In Feb. 1995, 400 migrants from Burkina Faso were expelled from Gabon in this way".

3. Sanctions

335. Article 6(1) of the Convention lists the types of administrative, civil and penal sanctions (which include imprisonment in their range) that must be defined and applied under national laws or regulations in respect of the *organization* of movements of migrants for employment in abusive conditions and knowing *assistance* to such movements, whether for profit or otherwise. The importance attached by governments to sanctions as means of combating illegal migration is evidenced by the fact that practically all of the laws and regulations examined lay down sanctions against organizers of manpower trafficking, which are periodically strengthened either by increasing existing penalties or by defining new offences to discourage illicit movements of migrants.[76]

336. The question was raised during the preparatory work for the adoption of Convention No. 143[77] as to whether the provisions concerning "administrative, civil and penal sanctions" meant that these three types of sanctions had to be applied simultaneously. The answer was that it did not, although it was pointed out that this possibility was not excluded in certain particularly grave instances. Since Article 6(1) leaves it to national laws or regulations to define sanctions, it appears to follow from this that it is for each country to decide on the precise form of sanctions to be provided for particular offences, subject to the express requirement that they shall include imprisonment in their range. While the Convention gives certain indications as to the offences concerned, it leaves their detailed definition to each State.

337. Generally speaking, there are three types of provisions relating to illegal immigration in national laws and regulations: those directed at migrant workers in an irregular situation; those aimed at punishing persons who organize or facilitate clandestine or illicit migrations; and those penalizing the illegal recruitment and employment of migrant workers.[78]

---

[75] The Government states in its report that: "Any manpower trafficking offences and international prosecution provisions enacted in accordance with both Articles 5 and 6 would have to conform with the terms of bilateral extradition arrangements between Australia and various countries." *Belgium* and *Switzerland* stated that the place where the violation is committed is deemed to be both that where the violator acts and that where the results are produced.

[76] For example, by extending the period of limitation for offences involving the clandestine introduction of foreign workers, not allowing extenuating circumstances or reductions of sentences, or refusing to lower the minimum fine, irrespective of the circumstances, in cases of illegal employment, etc.

[77] ILC, *Record of Proceedings*, 60th Session, Geneva, 1975, p. 652, para. 158.

(a) Measures directed at migrant workers

338. The Committee recalls that the measures advocated in Part I of Convention No. 143 to combat clandestine movements of migrants are primarily targeted at the demand for clandestine labour rather than the supply. The ILO instruments accordingly do not address the question of sanctions against migrant workers in an irregular situation. An examination of national laws and regulations, however — contrary to the spirit of the instruments — shows that sanctions against migrants in an irregular situation are very widespread, both in sending and in receiving countries.[79]

339. Some countries of emigration have adopted laws and regulations providing for sanctions both against their own nationals who emigrate in irregular conditions and against persons assisting them or provoking their departure.[80] Some countries of immigration have provisions imposing sanctions on migrant workers who unlawfully enter or reside in the country of employment, or more specific provisions referring to the illegality of the employment relationship. In addition to the fines or prison sentences that may be imposed on migrants in an irregular situation,[81] many provisions also provide for the application of expulsion measures[82] which may be accompanied by a temporary or permanent ban on residence in the country of employment, as is the case in *Switzerland* and in the *United Kingdom* (*Bermuda*).

---

[78] Sanctions imposed on recruiters or users of migrant workers in an irregular situation will be dealt with in paras. 354-359.

[79] For example: *Albania, Angola, Antigua and Barbuda, Bahamas, Bahrain, Barbados, Bulgaria, Cameroon, Chile, Colombia, Côte d'Ivoire, Cyprus, Dominica, Dominican Republic, France, Germany, Ghana, Indonesia, Israel, Jamaica, Japan, Kenya, Republic of Korea, Lebanon, Mauritius, Morocco, Mozambique, Philippines, Portugal, Romania, Singapore, South Africa, Sri Lanka, Switzerland, Syrian Arab Republic, Thailand, Tunisia, United States, Zambia.*

[80] For example, *Jamaica* (persons attempting to emigrate without the necessary authorization may be sentenced to up to three months' imprisonment, with or without forced labour, under the Emigrants Protection Act of 1925); *Pakistan* (under the Emigration Ordinance of 1979, persons attempting to emigrate unlawfully or helping another person to emigrate unlawfully, or provoking a person's departure in these conditions may be punished by a sentence of imprisonment of up to five years, or seven years for a repeat offence, and a fine); *Sri Lanka* (persons who infringe the provisions of the Passport (Regulation) and Exit Permit Act of 1980, which requires an exit permit, may be punished by a fine and/or a prison sentence of up to one year).

[81] For example: *Albania, Antigua and Barbuda, Bahamas, Cyprus, Dominica, Ghana, Indonesia, Israel, Jamaica, Japan, Kenya, Republic of Korea, Lebanon, Mauritius, Morocco, Portugal, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Zambia.*

[82] For example: *Republic of Korea* (Exit and Entry Control Act, 1993), *Indonesia* (Act No. 25/1997), *Lebanon* (Order No. 17561 of 18 Sep. 1964), *South Africa* (Aliens Control Act, 1991), *United Arab Emirates* (s. 32 of Federal Act No. 13/1996), *Switzerland* (Federal Act respecting the residence and establishment of foreigners of 26 Mar. 1931, codified in 1993).

340. The Committee notes that two countries, *Malaysia* and *Singapore*, practise corporal punishment (caning) as a sanction in cases of clandestine immigration. In this respect, it would recall that Article 1 of Convention No. 143 stipulates that "each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers". The Committee refers in this connection to the comments of the United Nations Human Rights Committee[83] and of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,[84] to the effect that "the prohibition on torture and cruel, inhuman or degrading treatment or punishment contained in article 7 of the International Covenant on Civil and Political Rights *extends to* corporal punishment" and that "corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".[85] The Committee itself considers that the sanctions foreseen by Malaysia and Singapore are not only contrary to the instruments here cited but also to the general principles of law.

(b) Measures directed at the organizers of clandestine movements of migrants and those who knowingly assist such movements, whether for profit or otherwise

341. Since each country is potentially a country of emigration and a country of immigration, the fight against labour trafficking is seen by each country in terms of combating illegal emigration of its own nationals and in terms of combating illegal immigration of foreign workers in its territory. However, the sanctions applied to organizers of clandestine movements of migrants and persons who knowingly assist such movements do not normally draw any distinctions between traffickers engaged in "exporting" or those involved in "importing" labour. Either the laws and regulations provide for official emigration machinery or a system for recruiting emigrants to ensure that the persons concerned are in possession of the necessary documents to enter the country of destination legally and take up employment lawfully, in which case it is an offence to cause, assist or encourage a person to emigrate for employment in a manner which is not in conformity with these provisions (offences of this kind are punishable in most countries by a fine and/or prison sentence); or they provide for official machinery for recruiting and introducing migrant workers; or a system of permits, in which case it is an offence to introduce migrant workers into the country in a manner which is not in conformity with the procedures laid down by law, punishable by fine and/or imprisonment. In principle, these sanctions apply to persons transporting or attempting to transport a foreigner in an irregular situation whether or not international borders are crossed. In this respect, the Committee has noticed a tendency to increase carriers' responsibility and strengthen the sanctions that may be applied to international transport companies for non-compliance with migration laws. There are very few countries, among them *Cyprus* and the *United Kingdom (St. Helena)*, which consider that such measures are not necessary, or whose legislation does not provide for sanctions against organizers of illegal immigration of labour, such as *Cape Verde, Nicaragua* and the *Syrian Arab Republic*, for example.

---

[83] See documents of the United Nations General Assembly, 37th Session, Supplement No. 40 (A/37/40) and 47th Session, Supplement No. 40 (A/47/40).

[84] See document of the United Nations Commission on Human Rights, 53rd Session, E/CN.4/1997/7.

[85] For further details see doc. E/CN.4/1997/7, in particular on the concept of lawful *sanctions* to which reference is made in Art. 1 of the Convention against Torture, which effectively excludes from its scope acts entailing "pain or suffering arising only from, inherent in or incidental to lawful sanctions".

342. Administrative sanctions for organizing or assisting illegal migration include administrative fines, withdrawal or suspension of the licence to act as an emigration agent, temporary or permanent closure of the offices or enterprises of the offenders, prohibition of residence in the country, suspension of the offender's driving licence, temporary or permanent withdrawal of the authorization to carry on international transport operations, and confiscation of the vehicle or any other object used in committing the offence, or its sequestration until the immigrant in an irregular situation is removed from the country, blacklisting of traffickers and employers, etc.

4. Consultation of employers' and workers' organizations

343. The Convention requires that employers' and workers' organizations be consulted in connection with the elimination of migrations in abusive conditions in three respects: (a) in seeking to determine whether there are any movements of migrants for employment in which migrants are subjected during their journey, on arrival or during their period of residence and employment, to conditions contravening relevant international multilateral or bilateral instruments or agreements (Article 2(2)); (b) in taking measures for systematic contact and exchange of information with other member States (Article 4); and lastly (c) in regard to the laws and regulations and other measures provided for in the Convention and designed to prevent and eliminate the abuses against which the Convention is directed (Article 7). It further provides that the representative organizations shall be enabled to furnish any information in their possession and to take initiatives for this purpose.

344. It is clear from the above that the Convention gives employers' and workers' organizations a far from negligible role in combating migration in abusive conditions. The Committee therefore cannot but regret the very small number of comments[86] from the employers' and workers' organizations which were communicated to government reports, on this point in particular.[87] Only the *New Zealand* Council of Trade Unions (NZCTU) has formulated comments on this point, in which it regrets the absence of formal consultation of the social partners when adopting laws and regulations to prevent abuse of migrant workers.[88] Most of the governments that mentioned this aspect of this Convention did so only in general terms, pointing out, for example, that employers' and workers' organizations are consulted on matters relating to migrant workers or on the grant of work permits. Such consultations may take place through committees responsible for manpower issues in general[89] or specifically for immigrant affairs.[90] In some countries, such as *Luxembourg*, representatives of migrant workers participate in these committees. *Australia* stated that the fact that there is no mechanism for tripartite consultation on illegal immigration (since clandestine movements of migration do not exist) constitutes one of the obstacles to ratification of Part I of the Convention.

---

[86] Only 27 representative organizations (14 employers' organizations and 13 workers' organizations) have submitted observations to the Committee concerning the application of

345. The Committee takes this opportunity to draw attention once again to the importance of the role of employers' and workers' organizations in the ILO's supervisory machinery and to emphasize the fact that these observations are a particularly useful source of information on the way in which ILO standards are applied in law and in practice by States. They have often enabled it to gain a better knowledge and deeper understanding of the difficulties arising in the application in practice of ILO instruments.

Section III. Illegal employment

A. Definitions

346. Although it is not defined, the term "illegal employment" may be considered to mean any employment that is not in conformity with national laws

---

Conventions Nos. 97 and 143 in their countries. The Committee has also received general observations from the World Confederation of Labour.

[87] The role of trade unions, particularly those in receiving countries, with respect to migrants in an irregular situation, consists of offering the assistance they need "in sorting out the practical problems arising out of repatriation and ensuring that the rights of illegal migrant workers acquired in the course of their work in the matter of remuneration, social security and other benefits are respected, and that they are able to receive legal aid". *Protecting the least protected: Rights of migrant workers and the role of trade unions*, Labour Education 1996/2, No. 103 (Geneva, ILO), p. 14.

[88] In reply to these comments the Government recalled that in *New Zealand* in the case of legislative change, consultation with all the interested parties takes place.

[89] For example: *Australia* (National Labour Consultative Council), *Ghana* (National Advisory Committee on Labour); *Syrian Arab Republic* (legal and technical committees of the Ministry of Social Affairs and Labour and the Tripartite Committee for Consultation and Dialogue); *Togo* (National Council on Labour and Labour Legislation), *Yemen* (Labour Council).

[90] For example: *Luxembourg* (the National Employment Committee and the National Immigration Council); *Norway* (Forum for Multi-Cultural Norway).

and regulations. This interpretation is confirmed by the Committee's examination of legislation.[91] In any case, it is for each State to define the precise scope of the term "illegal employment", as is indicated by the wording of Article 6(1).

347. Under Article 2(1) of Convention No. 143, each State for which this Convention is in force undertakes to seek to determine "whether there are illegally employed migrant workers on its territory and whether there [...] arrive in its territory any movements of migrants for employment in which the migrants are subjected [...] during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations". Article 3 requires ratifying States to adopt all necessary and appropriate measures to suppress the illegal employment of migrants and against those who employ workers who have immigrated in illegal conditions. Under Article 6(1), "provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers". It is thus clear from the wording of the provisions quoted above that Article 6 of the Convention applies to *all* forms of illegal employment and not just those in *abusive conditions*, while in respect of the organization of clandestine movements of migrants and assistance to such movements, the same Article requires sanctions only if the clandestine workers are subjected to abusive conditions.[92]

B. Detection and suppression of illegal employment

1. General measures

348. As in the case of clandestine or illegal migration, Convention No. 143 provides that each Member for which the Convention is in force shall take measures to *detect* illegally employed migrant workers on its territory. Article 2 of the Convention deals not only with cases of illegal employment, but also with the detection and elimination of cases in which lawfully employed migrant workers are in practice subjected to abusive conditions of work, i.e. conditions that are not in conformity with the requirements of national laws or regulations or of an international agreement, such as the bilateral agreement under which they were recruited. While migrant workers in an irregular situation are particularly vulnerable to exploitation by unscrupulous employers, the same is true to some extent of lawfully employed migrants, both because they are less well equipped than nationals to defend their own interests in a foreign country and because in many countries[93] they cannot change their job without authorization and thus may hesitate to seek a remedy against abuse for fear of losing their job and being refused permission to take other employment. It is therefore particularly important that receiving States be vigilant to ensure that the conditions of employment of migrant workers correspond in law and in practice to those laid down by legislation or bilateral or multilateral agreements, in particular as regards the most vulnerable categories of migrants (domestic workers and temporary migrants), not only when they check contracts of employment for conformity with legislation but also when supervising how they are carried out in practice. Sending States also have a role to play in this respect (see paragraphs 126-129).

---

[91] For example: *Cyprus* (under Regulation 9(1) of the Aliens and Immigration Law, any non-national working within the national territory without a work permit is deemed to be an illegally employed migrant); *Lithuania* (s. 17 of the Employment Contract Act defines illegal employment as any activity carried out by a foreigner in violation of labour legislation).

[92] The conclusions adopted by the Conference Committee on this subject after the first discussion did in fact contain this limitation, referring to "any person employing workers who have immigrated in such conditions", but it disappeared as a result of the adoption during the second discussion of an amendment intended to introduce specific provisions for the detection of the illegal employment of migrant workers. There was no indication that it was intended to change the nature of the offence of illegal employment.

349. One safeguard against the illegal employment of migrants referred to by a number of countries is the *work permit system*, under which either the worker must have a work permit, which in some cases must be issued before his or her entry into the country, or the employer must obtain an authorization to employ foreign workers. Supplementary measures prescribed in this context include the requirement, as a condition for the issue of a work permit, that the worker has entered the country legally, or that the contact between the prospective employer and worker has not been made through an illegal method of recruitment, or, where a recruitment agreement has been concluded with the sending country, that the worker has been recruited in conformity with its provisions.

(a) Employers' obligations

350. Among the measures for the detection of illegally employed migrant workers, mention may be made of provisions requiring employers to provide the competent authority with particulars of all foreign workers they employ: (a) in some countries, for example, *Mozambique*, employers must systematically inform the employment office, labour inspectorate or other authority responsible for ensuring the protection of workers of the number and names of foreign workers they employ and/or indicate to the employment office the termination of contract of a migrant worker; (b) in others, such as *Bahrain*, *Thailand* and *Tunisia*, employers in respect of whom work permits have been issued are required to supply particulars of all workers employed by them when so requested by an immigration officer, and must inform the immigration officer when they cease to employ a worker (including a migrant worker) admitted to work for them; (c) still other countries, such as *Tunisia*, require employers to keep a register of foreign workers employed by them, which must be presented to the inspectorate when requested. The Committee notes that in the *United States*,[94] since November 1986, the employer must verify the authenticity of the work permit presented by all "alien workers" hired by him or her and keep proof of his or her endeavours in this regard, in order to be able to present this should it be so required, to a representative of the Immigration and Naturalization Service and the Department of Labor.

---

[93] For example: *Benin, Burkina Faso, Cameroon, Congo, Czech Republic, Greece, Indonesia, Jordan, Republic of Korea, Kuwait, Lebanon, Lithuania, Malaysia, Mauritius, Morocco, New Zealand, Papua New Guinea, Philippines, Saudi Arabia, Sri Lanka, Thailand, Tunisia, Turkey, Viet Nam.*

(b) *Obligations of public administrations and services*

351. Public administrations also have a role to play in detecting illegal employment: in most cases, the labour inspectorate and labour administration or specific bodies, such as the Bureau of Foreign Employment in *Sri Lanka* and the Provincial Governor in the *Republic of Korea* are responsible for ensuring that no migrant workers are employed illegally by carrying out periodic unscheduled inspections, particularly in establishments and sectors known to hire or harbour workers illegally (hotels, construction, restaurants, food processing plants, etc.).[95] The labour inspectorate may also be called upon to assist the employment offices in ensuring that migrant workers are employed only in accordance with the law. The checks periodically carried out by social insurance funds are sometimes used as an additional opportunity for detecting the illegal employment of migrant workers.[96] The role of the police in detecting illegally employed migrant workers, as well as clandestine movements of migrants, has also been mentioned.[97] As the *United States*[98] emphasized, the detection of illegal employment could also be ensured by the receipt of written complaints against employers or private recruitment agencies. Finally, the Committee recalls that, in addition to their respective mandates, officials of public administrations and relevant services have the duty to respect the basic human rights of all migrant workers.

(c) *Migrant workers' obligations*

352. Migrant workers themselves are also called upon to participate in the process in that, once they have been temporarily admitted to a country for employment, they must generally be in possession of documents which enable the legality of their residence to be checked at any time.[99] In this respect, some countries such as *Australia* have reported problems in seeking to detect cases of illegal employment in the absence of a system of documentation which would readily show that a person is not entitled to take up employment.

---

[94] Immigration Reform and Control Act (an amendment to the Immigration and Nationality Act) (8.U.S.C., s. 1342(b)).

[95] For example: *Bahrain, Benin, Burkina Faso, Congo, Côte d'Ivoire, Ghana, Indonesia, Jamaica, Republic of Korea, Lebanon, Mali, Morocco, Mozambique, New Zealand, Papua New Guinea, Sri Lanka, Togo, Tunisia, United Kingdom (Gibraltar), United States.*

[96] For example: *France, Greece.*

[97] For example: *Morocco, San Marino.*

[98] In the *United States*, any person or entity having knowledge of a violation or potential violation of the federal law may submit a signed, written complaint containing detailed factual allegations relating to the potential violation and the specific conduct alleged to constitute a violation of the federal law (8.U.S.C., s. 1324(a)(e)).

353. Although governments did not refer to this aspect of the Convention in their reports, it should be recalled that Article 2(1) is worded in such a way as to include, in addition to conditions of employment, other *living conditions* of migrant workers during their period of residence. In other words, countries of employment are called upon to detect abusive conditions of residence and employment to which migrant workers are subjected (for example, in regard to housing) and to take measures to prevent and suppress them.

2. *Sanctions*

354. Article 6(1) calls for the definition and application of sanctions in respect of the *illegal employment* of migrant workers. Reference should be made to the sanctions required by the Convention in respect of the *organization* of clandestine or illicit movements of migrants for employment and in respect of knowingly assisting such movements, whether for profit or otherwise (paragraphs 335 to 342 above).

355. Article 6(2) provides that "where an employer is prosecuted by virtue of the provision made in pursuance of this Article, he shall have the right to furnish proof of his good faith". This Article should not be interpreted as reversing the burden of proof in the event of prosecution for illegal employment or as placing an obligation on the employer, as the Government of *Australia* appears to believe, to check the residence status of any foreign worker he or she wishes to hire. This is because, first, under Article 6(1), it is left to national laws or regulations to define the precise nature of the offence of illegal employment of migrant workers in accordance with the legal system; second, in most countries the general rules of criminal law require the prosecution to prove a guilty intent without it being expressly spelled out; third, according to the legal provisions examined by the Committee, the employer has to have acted "knowingly" or "negligently". In *Australia*, for example, section 233 of the Migration Act stipulates that "a person must not knowingly or recklessly harbour an unlawful non-citizen"; the penalty for this offence is two years' imprisonment; in *Switzerland*, to be guilty an employer must have acted "intentionally". A higher fine may be imposed by the judge if it is proved that the employer was motivated by "greed".[100] It is thus only if the prosecution does not have to prove that the employer acted knowingly or intentionally that paragraph 2 of Article 6 would be applicable.

---

[99] For example: *France, Morocco, Switzerland, Thailand.*

[100] s. 23(4) of the Federal Act of 26 Mar. 1931 respecting the residence and establishment of foreigners.

356. Generally speaking, the sanctions that may be applied against employers in cases of illegal employment include imprisonment in their range.[101] In a number of countries the legislation provides that offenders shall be liable to a fine and/or imprisonment for the first offence and that the fine will be increased (usually doubled) and combined with a prison sentence for a second offence.[102] In other countries, such as *Germany*, the sanction depends on the gravity of the offence. In *Switzerland* it is not the "recruitment" of foreigners who are not authorized to work, but their "employment" which is sanctioned by legislation. The Committee takes this opportunity to recall that the Convention leaves it to each State to define the sanctions it considers adequate to combat the illegal employment of migrant workers. Accordingly, in so far as provisions ensure that illegal employment is prevented and that the sanctions provided for in the Convention are applied to it, they are in conformity with the objectives of the Convention. In countries in which it is not an offence to employ a migrant worker who does not have the necessary authorization to work, as is the case in *Cape Verde*, for example, it may be possible to charge the employer with aiding and abetting an offence under the immigration legislation or with harbouring a migrant in an irregular situation or a person who has committed an offence, with certain exceptions.[103]

357. As was pointed out in paragraphs 335-342, administrative sanctions may take two main forms: first, employers who have infringed the provisions regulating the employment of foreign workers or who have failed to comply with labour legislation generally may be refused further authorizations to employ foreign workers as in *Austria*, for example; second, financial penalties may be imposed administratively in the form of an obligation to pay the costs of repatriating the worker and his or her family as in *Belgium*, for example, as well as a fine or of a compulsory contribution to the funds used for regulating the immigration of foreign workers.[104]

[101] For example: *Gabon* (Act No. 5/86 of 18 June 1986 respecting the admission and residence of foreigners provides for the imposition of a fine and imprisonment for employers recruiting a foreign worker in violation of the provisions of the law); *Greece* (s. 33 of Act No. 1975/1991 provides for three months' imprisonment and a fine of at least 100,000 drachmas); *Republic of Korea* (the Exit and Entry Control Act imposes up to one year's imprisonment and a 5-million won fine on employers of clandestine migrants); *United States* (the Immigration and Nationality Act of 1952 provides that the judge may put an end to the employment of a foreigner in an irregular situation and order the payment of a civil fine of $250 to $10,000 for each foreigner employed in violation of the Act; the employer or the enterprise may in addition be liable to criminal conviction or a fine and, where applicable, a prison sentence of up to six months).

[102] For example: *Gabon, Indonesia, Republic of Korea, Luxembourg, Malaysia, Mauritius, Norway, Papua New Guinea, Suriname, Thailand, Tunisia, United States*.

[103] *Australia* states that there are no measures against employers who hire migrant workers who have immigrated in illegal conditions unless they do so knowingly.

[104] For example, in *Switzerland*, under the Ordinance of 6 Oct. 1986 limiting the number of foreigners, the Cantonal Employment Office will reject some or all of the applications to hire foreign labour presented by an employer who has repeatedly or seriously infringed the legislation governing

358. Very few governments have referred to civil sanctions against employers who do not comply with legislation. The Committee has however noted that some of the legislation examined enables the illegally employed worker to claim damages and the cost of repatriation from the employer, provided that the worker is not responsible for the situation,[105] and in *Belgium*, the Ministry can initiate a procedure to halt activity with the Trade Tribunal on behalf of involved workers.

359. In their reports governments have generally confined themselves to indicating the legal provisions defining sanctions for the illegal employment of migrant workers. They have not given specific information on the manner in which these sanctions are applied in practice or on the extent to which legal proceedings have been brought against employers of clandestine migrant workers. Finally, it is of interest to note that, contrary to Europe, many receiving countries in Asia, as is the case in the *United States*, use sanctions against employers as a means of controlling clandestine migration rather than as an employment standard.[106]

* * *

360. Examination of the reports submitted to the Committee shows that member States of the ILO are, on the whole, very active in terms of attempting to combat clandestine migration — whether or not under abusive conditions — and against illegal employment. However, it appears that, short of establishing a disproportionate and expensive system of police surveillance, of which the efficiency could never be guaranteed, and without restricting public freedom, the multiplication of repressive laws and practices which have arisen in the past few years is not sufficient to efficiently control migration flows and abusive practices to which migrant workers can be victim often continue to occur on a similar scale.[107]

361. If the fight against clandestine migration and, a fortiori, the protection of nationals by both sending and receiving countries is justified, at the same time, it is important to ensure respect of the basic human rights of all migrant workers, in order to avoid migrant workers (notably those in an irregular situation) finding themselves in a situation where their rights are not respected and where they are vulnerable to abuses of all kinds. The protection of migrant workers and the fight against clandestine migration and illegal employment whilst protecting human rights is not always obvious in practice.

---

foreigners (s. 55(1)). Under s. 55(3), the guilty employer is required to pay the cost of assisting and repatriating the foreigners employed without authorization.

[105] For example: *Egypt* (the Tribunal can demand payment of damages and interest to the victim, Act No. 10, 1991), *Mali*.

[106] *International migration policies*, op. cit., p. 223.

[107] See, for example, in this respect, document GB.265/ESP/2, paras. 35-36 on the persistence of bad treatment inflicted upon migrant workers.

Situations of abuse and illegality

362. One of the problems the Committee encountered in carrying out the survey was in how to define certain of the terms used in Convention No. 143 in particular. As will appear from the text (Chapter 4), the precise meaning of "abusive conditions" (title of Part I, and Articles 2 and 3 read together) is not clear, and this might usefully form a part of future deliberations in the Governing Body and the International Labour Conference. The Convention would appear on a literal reading to qualify any migration "contravening relevant international multilateral or bilateral instruments or agreements, or national laws and regulations" as abusive; but clearly there are abusive situations which merit regulation regardless of whether the situation of the workers concerned is in entire accordance with the national and international law. In addition, Convention No. 143 leaves it somewhat ambiguous whether the term "illegal employment of migrants" used in Articles 3(a) and 6 refers to the kind of work being carried out by the migrant, or refers simply to the conditions under which the migrant was employed, or both these situations.

363. The Committee has also noted in carrying out the present survey that while under Article 3 of Convention No. 143 "Each Member shall adopt all necessary and appropriate measures […] (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants", the methods to do so require a balanced approach to this problem. This subject is not, however, covered in these instruments. The Committee recalls the requirement of Article 1 of Convention No. 143 that ratifying States undertake "to respect the basic human rights of all migrant workers", whether or not they are in a situation of legality. This may imply a framework for States' law enforcement efforts in this domain and could be addressed by the Conference in examining the question.

364. Finally, it can be questioned whether the conditions of residence and circulation of persons on the international level would not be more efficient were it the fruit of effective cooperation between concerned governments; that is to say, in parallel with the fight against clandestine migration and illegal employment, were action to be taken on the causes of migration pressures through the means of a realistic policy of durable co-development.[108]

[108] For a number of poor countries, it is remittances from emigrants and not that of international aid which constitutes the largest portion of the national income: with 0.27 per cent of the gross national product devoted to public service development, developed countries have never been so far from the 0.7 per cent of GNP which is the target of Overseas Development Assistance from the international community.

CHAPTER 5

EQUALITY OF OPPORTUNITY AND TREATMENT

365. Migrant workers face various forms of discrimination in employment and occupation. They often perform the jobs that national workers are reluctant to do, which explains why they are primarily employed in unskilled manual labour and menial tasks and are generally assigned to arduous or dangerous work.[1] Numerous studies, in particular one recently carried out by the ILO in several countries,[2] have clearly shown that the discrimination suffered by migrant workers begins at the recruitment stage and the difficulties in finding employment often result in highly qualified people doing relatively menial jobs.

366. Once they have found a job, migrant workers often come up against other forms of discrimination. Since they are generally concentrated at the bottom of the occupational ladder, it is hardly surprising that they earn substantially less, on average, than nationals. Often, however, they also earn less than nationals doing the same job. Their chances of advancement and promotion are impaired by the fact that they are also less likely than nationals to receive further training. Not only do migrant workers find it difficult to obtain a job, they also have trouble keeping it. They are often used as a buffer stock for reserve labour hired at times of shortage and dismissed when the employment situation deteriorates. Far from being a phenomenon exclusively affecting rich countries, this situation also occurs in the more dynamic developing countries.[3]

---

[1] "Probably the greatest contrast between the local labour force and the immigrant population is in the Gulf States. In *Kuwait*, for example, most national employees work for the Government. As a result, private sector manufacturing companies find it very difficult to recruit Kuwaitis at all, and the most arduous work is certainly left to foreigners. The Gulf conflict of 1990-91 prompted thoughts that the country should become more self-reliant but while the national composition of immigrants may have changed, the overall dependence on them has not." Stalker, op. cit., p. 95.

[2] The ILO project entitled "Combating discrimination against (im)migrant workers and ethnic minorities in the world of work", 1990-98. To prove the reality of discrimination encountered by migrant workers in their quest for a job, the methodology designed by Prof. F. Bovenkerk (*Testing discrimination in natural experiments: A manual for international comparative research on discrimination on the grounds of "race" and ethnic origin*, Geneva, ILO, 1992) for the project involved "practice tests" where equally qualified (im)migrant/ethnic minority and national candidates apply for advertised vacancies and the ensuing recruitment process is monitored. The project's findings show discrimination in access to employment to be a phenomenon of considerable and significant importance in all countries covered by the research *(Belgium, Germany, Netherlands, Spain* and the *United States)*. In at least one out of three application procedures migrants are discriminated against (see box 1.1 above for more details of this project).

[3] For further details see Stalker, op. cit., pp. 96-97.

367. The Committee would like to draw attention to the fact that women migrant workers suffer from double discrimination in employment: first because they are foreigners and hence subject to the same discrimination as male migrant workers; and second because they are women and as such often victims of entrenched traditional attitudes in their country of origin or of employment concerning the place of women in society in general and in working life in particular. For example, such social attitudes may affect the right of these women to leave their country of origin without permission from their husband, to engage in certain occupations, to receive an equal wage for work of equal value, to have access to education or training programmes, etc. There is no overlooking the fact that the large majority of women migrant workers are concentrated in "typically female" occupations or sectors, which not only tend to be less well paid than the jobs held by men but are also among those least protected by labour legislation.[4] Accordingly, although the policy of equality of opportunity and treatment referred to in Convention No. 143 focuses on discrimination in respect of nationality, the Committee draws attention to the fact that under Article 6 of Convention No. 97, the policy of equality of treatment between nationals and migrant workers which each member for which the Convention is in force undertakes to apply, must be pursued "without discrimination in respect of nationality, race, religion or *sex*". The Committee therefore noted with interest the information supplied by *Finland* on this aspect of its policy of equal treatment for migrants.[5]

368. For the ILO, the implementation of a policy of equality of treatment between nationals and migrant workers, and even more so of equality of opportunity, represents a measure of protection in that it aims to secure respect for the dignity of this category of workers, who are particularly vulnerable to all kinds of abuse. It also acts as a deterrent in that it enables the cost of migrant labour to be maintained at or raised to a level which is equal to that of national labour, as the Government of *Poland* pointed out in its report, observing that ratification of Conventions Nos. 97 and 143 and hence the recognition of the principle of equality of treatment between nationals and foreign workers would have the effect, among other things, of making foreign labour less attractive to certain Polish employers and hence help prevent the phenomenon of "social dumping".[6] Along the same lines, it was with interest that the Committee noted that the Federal Tribunal of *Switzerland* recognized that the application of the principle of equality of treatment between national and foreign workers served the public interest, by preserving social peace, to the extent that it justified a certain restriction on the freedom of trade and industry guaranteed by the Constitution; and that article 69 of the Constitution of *Panama* prohibits the hiring of foreign workers which could undermine the working conditions or standard of living of national workers. Although the underlying principles of combating discrimination in employment are moral and social, economic considerations also come into play, as illustrated by the extract from the manual drafted by the ILO as the final output of the project entitled "Combating discrimination against (im)migrant workers and ethnic minorities in the world of work".

---

[4] For example, domestic workers and agricultural workers, who make up a considerable proportion of women migrant workers throughout the world, are very often excluded from the scope of labour codes.

[5] Among the numerous brochures published by the Ministry of Labour of *Finland* for migrant workers, the Committee noted with interest one entitled "An immigrant woman in Finland", intended to inform women migrants of the country's policy of equality between men and women, as well as their rights with respect to residence permits, citizenship, housing, public services, work, education, marriage, family problems, legal assistance, etc.

[6] "Discriminating against ordinary [un- or semi-skilled] migrant workers or, worse, having foreigners work in illegal conditions appears to be attractive to some employers and some sections of society some of the time. However, it runs counter to fundamental beliefs concerning equity and

Box 5.1

Why is discrimination a problem?

As shown in the first phase of the ILO project, labour market discrimination does exist and migrants and ethnic minorities are particularly adversely affected by it. But why should policy-makers, legislators, employers, consumers, NGOs, trade unions and service providers care enough to change the state of affairs? Several reasons can be given, which are outlined below [...]

Economic reasons

Economically, it is not only society but also the individual employer who pays the costs of discrimination. By discriminating, employers are not using the full potential of the human resources available to them, and therefore they are neither maximizing production nor minimizing costs, contrary to all economic sense. By changing strategy and acting in a non-discriminatory manner, it is suggested that employers could avoid this unnecessary competitive disadvantage. A number of economically based arguments against discrimination and in favour of equal treatment can be given as follows:

1. Firstly, by discriminating in recruitment, employers are potentially passing over some of the best qualified candidates for the job, on irrelevant grounds, such as nationality or race. If they recruited only on the basis of aptitude, where there is no place for discrimination, the best qualified workforce would be achieved.[1]
2. Similarly, it has also been shown that by allowing discrimination to occur in the workplace, the employer is in fact encouraging disruption of teamwork, higher absenteeism, and reduced morale and commitment.[2]
3. [...]

(continued...)

human rights in the economic and social field, and it is bound to have a boomerang effect on national workers whose remuneration and working conditions will sooner or later be undermined by unlawfully employed migrants." Böhning, op. cit., p. 57.

(concluded...)

4. Further, on the national level, migrants and ethnic minorities are members of increasingly large communities who wield considerable market influence as consumers [...] What is more, the migrant/ethnic minority population in the countries under study is predicted to expand considerably in the future, and will constitute a highly significant proportion of the buying public — and of the workforce.[3]
5. The employer of a multi-ethnic workforce, being more representative of the multi-ethnicity which prevails in all the countries studied under the ILO project, is more likely to attract custom, talented job applicants and investors than the employer who discriminates [...] Consumers, employees and investors are beginning to value fair-mindedness and are rewarding this behaviour when they see it within companies.[4]
6. A company consisting of diverse groups, with a wide range of skills and experiences, is more likely to be creative, open for new ideas and alternatives than one made up of a more homogeneous group in terms of background and experience. Thus, diverse workforces add value to business activities through increased creativity and better problem-solving capacities.[5]

The economic argument as a whole is a strong one and should be appealing to all employers. Yet, whether through ignorance or misunderstanding, many employers do not see the costs of discriminating and continue to do so, to their own and others' detriment.

[1] For specific examples on how companies have benefited from non-discrimination in the *United Kingdom*, see Confederation of British Industry: *Discriminate on ability: Practical steps to add value to your workforce* (London, 1991). For examples of other European countries, see Stewart and Lindburg: *Gaining from diversity: Business participation and benefits in Europe's ethnic and cultural change: A report on perspectives and issues as a contribution to the European Year Against Racism* (Brussels, 1997). [2] See Wrench: *European compendium of good practice for the prevention of racism at the workplace* (Dublin, 1997), p. vi and p. 36. For statistics on the amount racial harassment and discrimination in the workplace costs employers, in relation to the *United Kingdom*, see CRE: *Racial harassment at work: What employers can do about it* (London, 1995), pp. 11-13. [3] This strategy known as "micro-marketing" is described by Anholt who says "marketing people [in the United States and Australia] long ago discovered that if you speak to people in their own language — and, a more complex and more subtle point, in their own culture — they tend to prefer you to companies that can't or won't". See Anholt: "Tapping into microculture", in *The Times*, 29 Oct. 1997 (London). [4] For specific company examples, see CRE: *Racial equality means business: A standard for racial equality in employment* (London, 1991). [5] See Lindburg: *Plus sum gain: Business investment in the socio-economic inclusion of Europe's immigrant and ethnic minority communities* (Brussels, 1998), p. 6.

Source: *A manual on achieving equality for migrant and ethnic minority workers* (draft) (Geneva, ILO, 1998), pp. 10-13.

Section I. Scope of the principles set forth in the instruments of 1949 and 1975

369. The main objective of the four instruments that are the subject of this survey is the elimination of the discrimination in employment and living conditions to which migrant workers are exposed. The instruments differ however in their approach: while the purpose of Convention No. 97 and Recommendation No. 86 is to proscribe inequality of treatment arising principally out of action by the public authorities, Part II of Convention No. 143 and Recommendation No. 151 aim in addition to promote *equality of opportunity* and eliminate discrimination in practice. It should be pointed out that under Article 6 of Convention No. 97 and Article 10 of Convention No. 143, the provisions of the four instruments as regards equality of treatment apply only to migrant workers (and the members of their families) who are *lawfully* within the territory of the country of immigration.

A. The 1949 instruments

370. Paragraph 1 of Article 6 of Convention No. 97 reads as follows:

> 1. Each member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:
>
> (a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities —
>
> (i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;
>
> (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
>
> (iii) accommodation;
>
> (b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
>
> (i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
>
> (ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension;
>
> (c) employment taxes, dues or contributions payable in respect of the person employed; and
>
> (d) legal proceedings relating to the matters referred to in this Convention.

371. This provision prohibits inequalities of treatment, which may result from legislation or the practices of the administrative authorities in certain areas. It does not, however, oblige States to take legislative or other measures to redress inequalities in practice. Nevertheless, States are under the general obligation, when the matters covered by clause (a) in particular are regulated by national legislation, to ensure that the legislation is applied, particularly by means of labour inspection services or other supervisory authorities. The wording according to which the State must apply "treatment no less favourable than that which it applies to its own nationals" allows the application of treatment which, although not identical, would be equivalent in its effects to that enjoyed by nationals.[7]

372. The principle of equality of treatment provided for by Convention No. 97 must be applied in a number of matters which will be examined in greater detail in section II of this chapter. It must however be made clear at this stage that Convention No. 97 does not deal with access to employment and to different occupations. This subject is covered by the provisions of Paragraph 16 of Recommendation No. 86.

Federal States

373. The application of Article 6 of Convention No. 97 might raise certain constitutional problems in federal States. Under paragraph 2 of Article 6 the provisions of paragraph 1 of this Article shall apply in so far as "the matters dealt with are regulated by federal law or regulations or are subject to the control of federal administrative authorities". Paragraph 2 was thus adopted to enable these States to ratify the Convention, even though they may not be able to meet the obligations arising out of the application of the principle of equality of treatment in full because of the way in which powers and responsibilities are shared between the federal authorities and those of the constituent units (states, provinces, cantons, etc.). In matters regulated by the law or regulations of the constituent units, or which are subject to the control of their administrative authorities, each State must determine the extent to which and manner in which the provisions of paragraph 1 of Article 6 shall be applied. In this connection, *Australia* has stated that its usual practice is to ratify a Convention only after it has obtained the formal approval of all the governments of the territories and constituent states, which prevents problems from arising subsequently in the application of this instrument. It appears from the examination of the reports that the definition of immigration policy is generally regulated at the federal level, whereas the implementation of the policy of non-discrimination in employment and occupation is regulated by the authorities of the constituent units.[8]

---

[7] See in this connection the preparatory work to Convention No. 66, Art. 6 of which contains an identical formulation, and in particular ILC, 25th Session, Geneva, 1939, Report III, p. 127.

[8] For example: in *Australia* migration policy falls within the federal or Commonwealth jurisdiction alone, whereas the task of combating discrimination in employment is shared between the federal or Commonwealth Government and the governments of the constituent states and territories; *Austria* states that the implementation of the principle of equality between national and foreign workers is the responsibility of the Länder and that in some of them (Carinthia, Lower Austria, Vorarlberg, Vienna, Salzburg) equality is guaranteed only if there is a reciprocity agreement on the subject between *Austria* and the worker's country of origin; *Belgium* states that it is the federal State which is competent to enact legislation relating to the employment of foreign workers, while the application of these laws and regulations is the responsibility of the regions. The regions are also competent for vocational rehabilitation and further training, placement and back-to-work programmes for persons drawing unemployment benefit. The Flemish region stated that it was competent for training, cultural activities, level of employment and private and public placement, while the German-speaking region emphasized its competence for assisting and ensuring the integration of immigrants; *Canada* (*Province of Quebec*) stated that the Canadian Government issues

B. The 1975 instruments

374. To ensure equality of opportunity and treatment in practice, it is essential that legislation and administrative practice should not permit any differences in treatment between national workers and migrant workers in a regular situation. Nevertheless, this is not enough, since migrants, more than any other groups, are the victims of prejudice and other discriminatory attitudes in regard to their work and conditions of life, in particular at times of economic recession and high unemployment. Moreover, owing to their lack of information and knowledge, often compounded by linguistic difficulties, they do not always insist on their recognized rights. Part II of Convention No. 143 and Recommendation No. 151 accordingly require not only the repeal of statutory provisions and the modification of administrative practices which are discriminatory, but also positive action by the public authorities to promote *equality of opportunity* in practice. While taking account of the special needs of migration for employment, the 1975 instruments draw their general inspiration from the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958.[9] A Special Survey was recently carried out on these instruments;[10] its observations on equality of opportunity and treatment in employment and occupation should be borne in mind in the context of this survey.

375. Under Article 10 of Convention No. 143 each State undertakes to "declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for

---

migrant workers with residence permits for Quebec, and assigns them a social security number, but it is the Province of Quebec which issues them with a work permit; *Italy* states that the regions, provinces, communes and other local entities must take the necessary steps in pursuit of the objective laid down by the central State, which is to remove obstacles which hamper in practice the acknowledgement of rights and interests of foreigners, particularly with regard to basic human rights, housing and social integration; *Mexico* indicated that migration policy is a federal responsibility and that labour policy is partly a federal responsibility and partly the responsibility of the constituent entities of the Mexican State; *Switzerland* indicated that it is the cantons that are competent for the social integration of foreigners; the *United States* indicated that legislation relating to foreigners lies in the federal sphere, and thus lies with Congress. The constituent states may not adopt legislation on these matters which contravenes federal provisions or international agreements to which the *United States* is party.

[9] Para. 8 of Recommendation No. 111 provides that with respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of Convention No. 97 relating to equality of treatment and to those of Recommendation No. 86 relating to the lifting of restrictions on access to employment. Having been adopted subsequently, Convention No. 143 and Recommendation No. 151 are largely modelled on the definitions and terms of Convention No. 111.

[10] Special Survey on equality in employment and occupation in respect of Convention No. 111 (Geneva, ILO, 1996).

persons who as migrant workers or as members of their families are lawfully within its territory".

376. Although the Convention clearly states the scope and content of the policy to be followed, it leaves to each State the choice of methods to be followed in declaring and pursuing this policy. These methods must merely be "appropriate to national conditions and practice". Depending on the circumstances, the policy of equality of opportunity and treatment may be established by constitutional[11] or legal provisions,[12] by a series of administrative or legislative measures[13] or by other means.[14] The fact that there is no general text expressly setting forth a policy of equality of treatment is thus not an obstacle to acceptance of the obligations arising out of Part II of Convention No. 143, as some governments appear to believe.[15] In some countries, such as *Finland*, for example, constitutional provisions lay down the general principle of equality between nationals and foreigners, subject to certain reservations (essentially the exercise of political rights). Additional measures would appear to be necessary, however, in so far as these provisions essentially regulate relations between the State and individuals, and not those between private individuals (in particular between employers and workers).

377. It is not necessary to achieve equality of opportunity and treatment immediately upon ratification of the Convention. It is the objective of a national policy which may be implemented progressively under a coordinated programme of positive measures. These are described in detail in Article 12 of the Convention and in certain provisions of Recommendation No. 151 which will be examined in section II of this chapter and in Chapter 6.

---

[11] For example: *Bulgaria, Cyprus, Falkland Islands (Malvinas), Germany, Lithuania, Malta, Slovenia.*

[12] For example, by labour legislation: *Angola, Antigua and Barbuda, Australia, Belarus, Benin, Cameroon, Canada* (including the labour legislation of the provinces and territories), *Central African Republic, Congo, Côte d'Ivoire, Finland, Germany, Hungary, Indonesia, Japan, Jordan, Republic of Korea, Mali, New Zealand, Philippines, Saudi Arabia, Togo* and *Tunisia*; or by penal legislation: *Finland.*

[13] For example: *Mozambique* (Decree No. 1/76 of 6 Jan. 1976).

[14] For example: by collective agreements *(Austria, Belgium, Côte d'Ivoire)*; bilateral agreements (all of the bilateral agreements on social security concluded by *Luxembourg* contain a provision on equality of treatment); multilateral agreements (in 1993, *Canada, Mexico* and the *United States* signed the North American Agreement on Labor Cooperation (NAALC) supplementing the North American Free Trade Agreement (NAFTA). The application of NAALC in *Canada* involved not only a federal decision but also the participation of the provinces. On 10 Feb. 1997 the Minister of Labour of the Province of Quebec signed an agreement with the federal Government to secure the implementation of NAALC in consenting provinces. The signatories of NAALC undertook to respect 11 principles relating to workers' rights and to promote their application in practice in their territory. Principle No. 7 concerns the elimination of discrimination in employment on grounds such as race, religion, age, sex, etc.; Principle No. 11 relates to the protection of migrant workers; court rulings (the Federal Tribunal in *Switzerland*); arbitration awards *(Australia)*.

[15] For example: *Barbados, Luxembourg* (with the exception of the European Community Regulation (EEC No. 1612/68) of the Council of 15 Oct. 1968 on freedom of movement for workers within the Community), *New Zealand, United Kingdom (Isle of Man, British Virgin Islands, Jersey).*

Seasonal workers

378. The application of the policy of promoting equality to seasonal workers was discussed on several occasions during the preparatory work for the adoption of Convention No. 143 and called forth the following commentary from the International Labour Office: "under the text in its present form, seasonal migrant workers are obviously not excluded (as they are likewise not excluded under Convention No. 97) and they should therefore benefit from equality of opportunity and treatment. It seems likely, however, that the extent to which they will really be able to benefit from the 'national policy' enjoined by the Convention will depend on the time they stay in the country of employment".[16] It would seem obvious that although seasonal workers like other migrant workers, must enjoy equality of treatment in matters having an immediate impact such as remuneration, hours of work, etc., the possibility of enabling them to benefit from measures which demand a certain time, such as vocational training, is in practice much more limited when account is taken of the temporary exceptions in respect of free choice of employment authorized by Article 14(a) of Convention No. 143.

Methods appropriate to national conditions and practice

379. Article 10 of Convention No. 143 calls upon States to declare and pursue a national policy to promote and guarantee equality of opportunity and treatment "by methods appropriate to national conditions and practice". The Convention does not oblige States to intervene in matters which in some countries are left to collective bargaining or to the social partners, as some governments appeared to have interpreted it to mean.[17] As the Committee recalled in its Special Survey on Convention No. 111 (which lays down an obligation worded in similar terms), in such cases the State may endeavour to obtain the desired results, where necessary, by exhortation, by attempts at persuasion or by negotiation, rather than by having recourse to executive measures or legislation. The requirement that the methods be appropriate "to national conditions and practice" is also expressly stated in Article 12 of Convention No. 143, which specifies the measures to be taken within the framework of the national policy. Accordingly, Article 12(b), which refers specifically to the enactment of such legislation as may be calculated to secure the acceptance and observance of the policy, cannot be interpreted as imposing the general obligation to enact legislation in all the fields covered by Part II of the Convention. This conclusion is not invalidated by Article 12(g), according to which States must guarantee equality of treatment, with regard to working conditions, for all migrant workers who perform the same activity: on the one hand, since this provision is part of the general framework of Article 12, the measures it prescribes must be taken in a manner consistent with "national conditions and practice"; on the other, a study of the preparatory work[18] reveals that this provision was adopted "to avoid discrimination between migrant workers according to their nationality and their particular form of employment". In this connection it will be necessary to examine the impact on equality of treatment between migrant workers of increasing integration in regional groupings, one of the purposes of which is often to ensure equality of treatment between nationals of member States. In fact, in practice this equality is often, objectively, to the detriment of third-country nationals. This is among the subjects that should be addressed in an International Labour Conference discussion on the subject of migrant workers.

---

[16] ILC, 60th Session, Geneva (June 1975), Report V(2), p. 19.

[17] For example: *Australia, Germany, Slovakia.*

380. Unlike Article 6 of Convention No. 97, Part II of Convention No. 143 contains no special provisions governing federal States. Given the very flexible wording of Articles 10 and 12, however, it should be possible for these States to accept the obligations of the Convention without prejudice to the division of powers and responsibilities between the authorities of the federal State and those of its constituent units.

Section II. Subjects covered by the instruments

1. Employment and occupation

381. Article 6 of Convention No. 97 implies the repeal or abolition of discriminatory legislative measures and practices in the fields covered by the instrument. A similar obligation is expressly stipulated by Article 12(d) of Convention No. 143, under which States must "repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy" of non-discrimination. As pointed out above in paragraph 372, paragraph 1(a) of Article 6 of Convention No. 97 refers to the principle *conditions of work* but not to access to employment. The equality policy referred to in Article 10 of Convention No. 143, however, refers, inter alia, to *employment and occupation*. The terms are similar to those used by Convention No. 111, Article 1(3) which provides that "the terms 'employment' and 'occupation' include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment". It would appear to be logical therefore to assign them the same meaning here, especially since the provisions of Recommendation No. 111 detailing the content of these various subjects (Paragraph 2(b)(i) to (vi)), were included in similar terms in Recommendation No. 151 (Paragraph 2(a) to (f)).

---

[18] ILC, *Record of Proceedings*, 60th Session, Geneva (June 1975), p. 646, para. 74.

A. Repeal or abolition of discriminatory legislative or administrative measures

1. Access to employment

382. It should be recalled here that equality of opportunity and treatment as provided for in Article 10 of Convention No. 143 applies only to migrant workers and their families *lawfully* within the territory. It is only once the worker has been admitted to a country of immigration for purposes of employment that he or she will become entitled to the protection provided for in this part of the Convention. Article 10 does not therefore affect the right of a State to admit or refuse to admit a foreigner to its territory; nor is its purpose to regulate the issue or renewal of residence or work permits. The provisions of Part II refer to the period *after* the migrant is regularly admitted to the territory of the receiving country. It is only when residence and work permits contain restrictions or conditions contrary to the principle of equality of opportunity and treatment laid down in Article 10 of Convention No. 143 that States may have to amend or modify their law or practice in accordance with Article 12(d).

383. Article 14 of the Convention authorizes certain restrictions on the principle of equality of treatment as regards access to employment. Some of these, which are general in scope, allow States to make the free choice of employment subject to temporary restrictions during a prescribed period which may not exceed two years (Article 14(a)). Others, which are of a specific nature, allow permanent restrictions to be imposed on access to limited categories of employment or functions where this is necessary in the interests of the State (Article 14(c)).

(a) General restrictions

384. Article 14(a) of Convention No. 143 provides that a Member may:

> [...] make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than *two years*, that the worker has completed his first work contract.

385. It should be recalled in this connection that Recommendation No. 86, Paragraph 16 of which already advocated equality of treatment as regards access to employment, authorizes temporary restrictions for a period of *five years*.

386. Article 14(a) of Convention No. 143 makes a distinction between restrictions on the free choice of employment which may be authorized for a certain period and the right to geographical mobility, which must be assured whatever the duration of the residence or employment.

(i) Restrictions on free choice of employment

387. The legislation of most countries, with the exception of a few countries where immigrants are permanently admitted on arrival, contains restrictions which may affect free choice of employment. These restrictions may directly limit the access of migrant workers to employment by regulating the circumstances in which they may change jobs or by establishing priorities for employment in favour of national workers. The employment of migrant workers is indirectly affected by other limitations such as statutory provisions requiring employers to obtain authorization to employ foreign workers or fixing the proportion of national workers who must be employed in an undertaking.

Direct restrictions

388. The practices followed in different countries as regards direct restrictions on the circumstances in which a worker may change his or her job vary in restrictiveness. In many countries *work permits* are issued to foreigners — at least during the initial period — for a given post in an enterprise or for a given employer[19] as well as for a given geographic region, as is the case in *Bulgaria*, for temporary migrant workers. This also appears to be the case in countries which distinguish between permanent and temporary immigrants, in respect of the latter category. In certain cases authorization may be granted for a given occupation or branch of activity without being limited to a single employer, either from the start of the initial period of employment[20] or when certain conditions or residence and employment have been met.

389. When the permit is issued for a given post or a given employer the worker may change his or her employment or employer only under certain conditions. This is also the case with changes in authorized occupational categories. In most countries a worker may not in principle change employers during the first year, and workers holding a work permit issued for a given occupation may not, as a rule, engage in an occupation other than that authorized by the permit. Moreover, in most cases, the authorization to change employer or occupation is granted only after an examination of the employment market situation.[21]

Indirect restrictions

390. In a number of countries[22] the employer may employ a foreign worker only if he or she has been authorized to do so or if the contract which is being offered to the foreign worker has been approved by the competent authorities. This authorization, which is necessary for the employer, must be distinguished from the work permit, which is necessary for the worker. The legislation of some countries[23] requires both an *employment authorization* and a work permit.

---

[19] For example: *Antigua and Barbuda, Barbados, Belgium, Cyprus, Czech Republic, Egypt, Jamaica, Mauritius, Oman.*

[20] For example: *Albania, Japan* (there are 27 categories of activities which a foreign worker can undertake, and for each of these, a specific period of residency is authorized. To change category, the migrant must obtain authorization).

[21] For example: *Austria, Belgium, Cyprus, Egypt.*

[22] For example: *Austria, Bahrain, Brazil, Congo.*

[23] For example: *Antigua and Barbuda, Austria, Côte d'Ivoire, Yemen.*

Although the employment authorization must be obtained by the employer, it is nonetheless restrictive in its effects on the occupational mobility of the foreign workers, since they may not be hired by employers who have been refused employment authorizations. Depending on the case, employment authorization will be granted only if warranted by the employment market situation[24] or if the quota of foreign workers which has been fixed for each undertaking[25] or at the national level[26] is not exceeded or, as in the *United States*, if it is not going to negatively affect the salary and working conditions of national workers employed in similar activities. The Committee considers that such provisions certainly run counter to the principle of equality of treatment between foreign and national workers.[27]

391. Restrictions on the employment of foreigners, by means of work permits or employment authorizations, are generally imposed during a preliminary phase and are progressively relaxed after a prescribed period of residence or employment, when the worker acquires the status of a permanent resident or becomes entitled to an unrestricted work permit. The duration of such restrictions on employment varies considerably from one country to another,[28] whereas the maximum period authorized by Article 14(a) of the Convention is two years.[29] However, in practice this duration may be reduced for nationals of countries with which bilateral or multilateral manpower agreements have been concluded, or may even be waived for workers from countries belonging to a zone of free movement of labour, as is the case for the nationals of the 15 Member States of the European Union, or if bilateral agreements have been concluded, such as the agreement on the settlement and movement of persons signed on 3 September 1969 between the *Republic of Upper Volta* and the *Republic of Mali*. Although restrictions on the possibility of changing jobs are generally progressively relaxed on the expiration of a period prescribed by national legislation, this is not always the case. In some countries, immigration policy either makes a distinction between immigrants admitted on a permanent basis and temporary migrant workers as in the *United States*,[30] for example, or only recognizes temporary immigration;[31] the latter are only issued permits for a specified period and a specific job. They may thus not change employment without obtaining a new permit, whatever the duration of their stay in the country.[32]

---

[24] For example: *Brazil, Burkina Faso, United States*.

[25] For example: *Angola* (at least 70 per cent of the employees of an enterprise must be nationals), *Chile* (85 per cent of employees), *Colombia* (90 per cent of ordinary workers and 80 per cent of specialized workers), *Nicaragua* (90 per cent of workers), *Panama* (90 per cent must be nationals or have resided in the country for at least ten years; in the case of technicians the percentage shall not exceed 15 per cent), *Peru* (20 per cent of employees may be foreigners, accounting for 20 per cent of the wage bill), *Venezuela* (10 per cent of employees may be foreigners, accounting for 20 per cent of the wage bill).

[26] For example: *Belarus, Estonia* (under 0.05 per cent), *Mozambique, Singapore*.

[27] For further details on this point, see, for example, the observation addressed to *Venezuela* on this subject in Feb. 1995.

[28] For example: *Australia* (two years, but only concerns permanent residents), *Austria* (from five or eight to ten years), *Belgium* (from two or three to four years), *Croatia* (three years), *Finland* (two years), *Luxembourg* (between four and five years), *Netherlands* (three years), *Papua New Guinea* (two years), *Spain* (three years), Sweden (three years), *Switzerland* (between five and ten years), *United Kingdom* (four years).

[29] *Germany* has stated that this two-year period is not feasible, given the large number of persons currently unemployed (over 4 million).

392. The exemptions provided for by Article 14(a) of Convention No. 143 also apply to members of migrant workers' families, although they are not expressly mentioned. In so far as family members have not acquired permanent residence status or an unrestricted work permit, they may not usually take a job without a permit. The issue of the permit will in principle depend on the employment market situation and may be subject to a residence requirement, as in *Austria, Denmark, Switzerland* or the *United Kingdom*, for example. It would seem none the less that restrictions on employment in many countries cease to be applied to members of migrant workers' families when they are lifted for the workers themselves.

393. Restrictions on the access to employment of foreign workers may also be the result of *employment priorities* in favour of national workers in many countries. In several of these countries the legislation obliges employers, in more[33] or less[34] explicit terms, to give preference to nationals or requires the employment service to ensure that the priorities established in favour of nationals are observed.[35] Depending on the case, in general the priority will place nationals in first place, followed by certain privileged categories of foreigners, such as foreign spouses or workers belonging to the same regional or subregional community.[36] In both cases this situation would appear to be contrary to the principle of equality of treatment as regards access to employment when it exceeds the period allowed by Article 14(a) of the Convention, which is two years. In most countries, however, it seems that nationals are given preference only over foreigners who do not reside in the country.[37]

---

[30] In the *United States*, the law recognizes three basic categories of migrants: (a) immigrants or lawful permanent residents (Green Card holders); (b) non-immigrants, who are persons lawfully admitted to the *United States* for a specific purpose; and (c) illegal aliens, who are persons entering the country unlawfully or who have remained after their legal right to do so has expired. The rights of migrants for employment as of all other foreigners may differ according to their entry or visa classification.

[31] For example: *Kuwait, Lebanon, Mauritius, Saudi Arabia, South Africa, United Kingdom (Bermuda)*.

[32] In this respect, the Committee recalls paragraph 4.1 of the guidelines on special protective measures for migrant workers in time-bound activities, adopted by the Tripartite Meeting of Experts on Future Activities of the ILO in the Field of Migration (Geneva, 21-25 April 1997), which states "tying time-bound migrants to a particular employer, occupation or sector is normal but, on human rights grounds, cannot be extended indefinitely. On economic grounds, too, the practice of tied employment in selected sectors should be strictly limited in time because it is tantamount to a measure of protection of employers, occupations or sectors benefiting from access to foreign workers at the expense of other employers in the same country or abroad".

[33] For example: in *Egypt* a foreigner cannot occupy a position which was previously held by an Egyptian national; in *Indonesia*, the employer must recruit a national worker for every foreign worker recruited; in *Peru*, art. 1 of Legislative Decree No. 689 of 4 Nov. 1991 stipulates that "irrespective of their activity or nationality, employers shall give preference to hiring national workers". In the *United Kingdom (Bermuda)*, an employer must advertise a job at least three times in the local newspapers before applying for authorization to hire a foreign worker, and the same job must be advertised locally every three years.

[34] For example: *Singapore*, employers must pay a levy of $300 if the proportion of foreign workers exceeds 35 per cent and $450 if it reaches 45 per cent; *Taiwan, China*, also practices this policy. On the subject of special levies policies on employers employing foreign workers, the

394. Equality of access to employment presupposes that foreigners have the right of access to *employment services* in the same conditions as nationals.[38] In most of the countries under review, only nationals or foreign permanent residents may be registered with the employment services.[39] The Committee has previously noted that in *Austria*, a migrant worker who is unemployed runs the risk of being expelled due to insufficient means of subsistence, regardless of whether he or she possesses a valid permanent residence permit. *Switzerland* also indicated that a permanent residence permit can be revoked in cases of poverty, as under Swiss law, poverty is a legal ground for expulsion, although the decision to expel an individual must respect the principle of proportionality, that is to say, expulsion is only ordered where return to the country of origin is possible and can be reasonably enforced. Equal treatment of national and foreign workers in terms of placement is an obstacle frequently mentioned by governments.

Committee reiterates the conclusions of the Tripartite Meeting on Social and Labour Issues Concerning Migrant Workers in the Construction Industry (Geneva, 4-8 March 1996) which dealt with the issue and adopted a policy which is opposed to their introduction in excess of actual administrative costs on the grounds that "Such a tax tends to provide an incentive for people to enter into illegal employment relationships, or it tends to be passed on to the migrant workers in the form of salary deductions or lower wages" para. 10 of the note on the work of the Meeting, GB.267/STM/3/1.

[35] For example, priorities established in the framework of "Bahrainization", "Gabonization", "Congolization", "Ivoirization" employment policies.

[36] For example: the Economic Community of West African States, the Southern African Customs Union, the Andean Community and the European Economic Area or European Union.

[37] The Committee notes that the Canada/Newfoundland Atlantic Accord Implementation Act requires that preference be given in employment in offshore oil development activities to residents of Newfoundland and Labrador. Since this preference is based on residence and not on nationality, this implies that it also affects Canadians from other provinces and that, conversely, a foreigner who has resided in Labrador or Newfoundland for a certain period may also be given preference, unlike a Canadian who does not reside in either province.

[38] For example: *Belgium* (the employment services of the Flemish region have adopted a Jobseekers Charter, one of the principles of which is equality of treatment among jobseekers. As for private placement offices in the region, they must adhere to a code of conduct which guarantees, inter alia, non-discriminatory treatment); *Germany* (Art. 3 of the Basic Law, concerning equality of treatment, is incorporated in the principles governing the placement of jobseekers).

[39] For example: *Czech Republic, Finland, New Zealand.*

395. In a number of countries, a *list of occupations closed to foreigners* is laid down by law.[40] When such a prohibition is permanent, it is contrary to the principle of equal treatment unless it applies to limited categories of occupations or public services which it is necessary to reserve for nationals in the interest of the State.

396. As mentioned above,[41] certain provisions fix the *maximum percentage of foreign workers* who may be employed in an undertaking. In certain cases the total wages which may be paid to foreigners are also subject to a quota. Depending on the composition of the foreign workforce provisions of this kind may involve the risk of restricting the possibilities of access to employment, at least for certain occupational categories of foreign workers.

(ii) Geographical mobility

397. Article 14(a) of Convention No. 143 expressly stipulates that national legislation may not restrict the right to geographical mobility of migrant workers lawfully within the territory, which they must enjoy from the beginning of their stay in the same conditions as national workers. Most countries point out that, although migrant workers in principle enjoy the right to geographical mobility, the existence of this right is conditional upon the issue of an employment authorization for the job concerned. This situation is not incompatible with Article 14(a) of Convention No. 143. In adopting this provision, it was the intention of the Conference to proscribe legislative provisions or administrative practices restricting the freedom of movement of foreign workers legally within the territory, such as those authorizing them to reside only in a given region or prohibiting their entry to certain areas. Article 14(a), on the other hand, does not prevent the imposition — at least during the preliminary phase — of certain restrictions on access to employment which may have an indirect effect on geographical mobility, such as work permits issued for a given post or employer or permits valid for a given region.

398. In federal States the principle of geographical mobility may raise certain difficulties when the constitutional system allows the constituent units freedom to admit or refuse to admit a foreigner to their territory, since foreign workers who are lawfully admitted to the territory of one unit of the federation may not be authorized to transfer their residence to that of another. In view of the flexible wording of Article 12 of Convention No. 143, a solution to these problems may be found by "methods appropriate to national conditions and practice", without affecting the division of powers between the federal State and its constituent units. In *Austria* and *Switzerland*, for example, the residence or work permit issued by the authorities is restricted in principle to a given Land or canton; after five years or ten years respectively, however, the migrant worker has the possibility of seeking work throughout the country.

---

[40] For example: in *Angola*, foreigners can only work in specified sectors, excluding the health and education domains, and in the *United Kingdom (Bermuda)*, the Government states that there are two types of lists: the first, "restricted category", where migrant workers may be permitted to be engaged in work, subject to such limitation as the ministry may place on the specific category, i.e. building trades, artistes, bank teller, bartender, musician, entertainer, fisherman, technical salesperson, tourist retail salesperson, travel agent, consultant); and the second, "closed category", where migrant workers without strong Bermudian connections are not allowed to work (i.e. sales clerk (non-tourist retail), salesperson, office receptionist, airline ground hostess, labourer/general, painter, floor supervisor, wallpaper technician, carpet layer, taxi driver).

[41] Para. 390.

(b) Restrictions necessary in the interests of the State

399. Under Article 14(c) of Convention No. 143 States may "restrict access to limited categories of employment or functions where this is necessary in the interests of the State". Unlike Article 14(a), which authorizes general restrictions on access to employment for specified periods, this provision allows foreign workers to be permanently excluded from certain categories of employment or functions.

400. In most countries, public service jobs are restricted to nationals, with some exceptions. For example, in *Angola*, foreigners can work in scientific and education fields, and in *Cape Verde*, in technical fields but not in others. In some countries, however, restrictions on the employment of foreigners are confined to certain specified posts in the fields of national defence and security.[42] Generally speaking, however, foreign workers do not appear to have access to the civil service, at least to permanent posts. In certain cases this exclusion may also extend to enterprises in the public sector.

401. The concept of "public service" may cover a wide range of activities, which may vary considerably from one country to another. This is also true of public enterprises. In these circumstances it might be useful for governments to review their law and practice in the light of the criteria mentioned in Article 14(c) of the Convention. This provision allows restrictions on the access of foreigners to employment provided that two conditions are fulfilled: (a) firstly, the exceptions must relate only to "limited categories of employment or functions" and (b) they must be necessary "in the interests of the State". The Convention thus envisages situations where the protection of the interests of the State justifies the restriction of certain employment or functions, by reason of their nature, to citizens of that State.

(c) Recognition of occupational qualifications acquired abroad

402. The difficulties which foreign workers may face in obtaining recognition of the occupational qualifications which they have acquired abroad may in practice result in their being denied access to certain jobs and to occupational advancement. It is accordingly important for States to make use, as far as possible, of the possibility provided under Article 14(b) of Convention No. 143, according to which they may "after appropriate consultation with the representative organizations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside [their] territory, including certificates and diplomas". This point will be discussed in further detail in paragraphs 531-536.

---

[42] For example: European Union nationals have the right to apply for any job in any Member State of the Union. However, some public service posts involving safeguarding public order or the interests of the State (armed forces, police, judiciary, tax administration, diplomatic service, etc.) may be restricted to nationals; the agreement on the settlement and movement of persons between *Upper Volta* and *Mali* sets forth the conditions in which the nationals of one country are treated on the same footing as nationals of the other in respect of public service jobs.

2. Conditions of work

403. The content of conditions of work is described in Article 6(1)(a) of Convention No. 97 and Paragraph 2 of Recommendation No. 151. It consists essentially of remuneration, hours of work, holidays with pay, minimum age for employment, apprenticeship and training, vocational guidance and placement, advancement, security of employment, etc. Few legal or administrative provisions in the field of conditions of work draw distinctions based on nationality. In fact, in most cases conditions are governed by the labour code or other labour legislation which applies to national and foreign workers without distinction, pursuant to the general provisions concerning their scope. It appears that administrative discrimination against migrant workers is most likely to occur with regard to security of employment and vocational training.

(a) Security of employment

404. Equality of treatment in respect of security of employment, the provision of alternative employment, relief work and retraining is dealt with in Article 8(2) of Part I of Convention No. 143 and in Paragraph 2(d) of Recommendation No. 151. As regards *security of employment*, it is important that the guarantees stipulated by law, for instance in the event of unjustified dismissal or staff reductions, apply to foreign workers as well as nationals. The difficulties arising out of the inclusion of a provision on equality of treatment in Part I (Migrations in Abusive Conditions) of Convention No. 143 will be examined in paragraphs 591-597 of this survey. Where the legislation makes this protection contingent on a certain type of contract, such as contracts of indeterminate duration, it should be extended to foreign workers on the same terms as to nationals, subject to the temporary exceptions provided for by Article 14(a) of Convention No. 143. According to the available information, laws which make express distinctions in this field are rare: for example in *Austria* the legislation provides that foreigners, or at least those who are subject to work permit restrictions, should be the first to be dismissed in the event of staff reductions. As regards equality of treatment in respect of *the provision of alternative employment, relief work and retraining*, here again everything depends on the situation of the migrant worker: if the worker is a permanent resident he or she will enjoy the same advantages as nationals after a certain period of time has elapsed, while it would be impossible for a temporary resident to meet the residence requirement and hence they will have little chance of gaining access to these benefits.[43]

(b) Vocational training

405. Paragraph 2 of Recommendation No. 151 provides that the effective equality of opportunity and treatment which migrant workers and members of their families should enjoy should extend to access to vocational guidance and placement services (subparagraph (a)), access to vocational training and employment of their own choice (subparagraph (b)), and advancement in accordance with their individual character, experience, ability and diligence (subparagraph (c)). Some governments refer to practices which may have the effect of limiting the access of foreigners to vocational training: in *Norway* the access of foreigners to vocational training is subject to a residence requirement; in *Canada (Province of Nova Scotia)* migrant workers are required to pay fees for education and apprenticeship training, while Canadian residents of the province obtain them either free of charge or at a reduced rate. These two cases again raise the problem of the application of certain provisions of the Convention to temporary migrant workers, i.e. those recruited for an economic activity or a job which is limited in duration, who by definition are unable to meet the residence requirements laid down by legislation in order to benefit from certain entitlements. Lastly, in so far as certain jobs are not open to foreigners, either temporarily or permanently (Article 14(a) and (c) of Convention No. 143), vocational training for these jobs is of doubtful value.

B. Elimination of discrimination in practice and promotion of equality of opportunity

1. Legal protection against discriminatory acts

406. The provision in Article 12(b) of Convention No. 143 that States shall "by methods appropriate to national conditions and practice [...] enact such legislation [...] as may be calculated to secure the acceptance and observance of the policy" of equal opportunity and equal treatment is modelled on a corresponding provision of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Although Convention and Recommendation Nos. 111 do not cover discrimination on the basis of nationality, they do extend to grounds which may form the basis for discrimination in practice against migrant workers and their families. Beyond their foreign nationality, migrant workers risk being victims of prejudice on grounds of their race, colour, religion, national extraction or social origin.[44] For this reason, several of the legislative provisions and enforcement procedures considered in the General Survey of the 1958 instruments may be useful weapons in seeking to combat discrimination against migrant workers. Reference is accordingly made to paragraphs 161 to 168 of the last Special Survey on equality in employment and occupation (1996), which make it clear that, of the seven criteria which are formally prohibited by Convention No. 111, race, colour and national extraction are among the most common grounds of discrimination in employment or occupation today other than sex.

---

[43] For example: *Australia, Austria, Czech Republic, Germany, New Zealand, United Kingdom.*

[44] In this respect, the Committee recalls para. 297 of its Special Survey (1996), wherein it was suggested that nationality, among other criteria, should be included in the list of prohibited grounds

(a) *Legislation prohibiting discrimination*

407. Few laws and regulations examined by the Committee contain provisions setting forth the principle of equality of opportunity and treatment between migrant workers and nationals of the country of employment. However, most countries have adopted anti-discrimination legislation which, while it is primarily aimed at racial discrimination, applies to discrimination on the grounds of colour, race or ethnic or national origins and accordingly, as indicated in the preceding paragraph, may be relevant to the problems of certain immigrants who may face discrimination on these grounds rather than on the basis of their nationality.[45] In some cases, provisions expressly prohibiting discrimination on the grounds of nationality are contained in general texts, such as the Constitution[46] or the Labour Code[47] or specific ones.[48] Such prohibitions may relate to terms and conditions of employment generally, or to remuneration.

---

for discrimination in the additional Protocol to Convention No. 111, which the Committee recommended adopting. For more details, see para. 32 of this survey.

[45] In this regard, Title VII of the Civil Rights Act (1964) in the *United States* protects all individuals against all discrimination in employment based upon national origin, race, colour, religion and sex. According to the terms of this Act, the following may be considered as proof of discrimination (in so far, of course, as the employer cannot show that the actions were necessary for the accomplishment of the job in question): a rule stipulating that employees speak English throughout the duration of employment; refusal to hire or to promote an employee as a result of his or her accent or way of talking; stipulating that the employee or candidate speak fluent English; stipulating that US nationality is necessary (where the law does not do so); or to favour US workers in terms of promotion, etc. The Committee also notes that this same Act states that all employers must guarantee to their employees a workplace which is free from harassment based on national origin and they can be judged responsible for harassment practised by their agents and supervisory employees regardless of whether the acts were authorized or specifically forbidden by the employer.

[46] For example: *Bulgaria* (art. 6), *Russian Federation* (art. 19).

[47] For example: s.13 of the Labour Code (1997) of *Poland*.

[48] For example: *Australia* (Racial Discrimination Act 1975, Racial Hatred Act 1995 and anti-discrimination laws adopted by constituent territories and states, such as the New South Wales Anti-discrimination Act 1977), *Canada* (Alberta's Human Rights, Citizenship and Multiculturalism Act), *Netherlands* (Equal Treatment Act 1994), *New Zealand* (Race Relations Act 1972), *Sweden* (Ethnic Discrimination Act 1994) and the *United Kingdom* (Race Relations Act 1976).

Provisions guaranteeing equal treatment

408. Another method of providing legal protection against discriminatory treatment of migrant workers adopted in some countries is to include in the legislation governing the employment of foreigners provisions guaranteeing equal treatment with nationals in respect of conditions of employment, or providing that authorizations to employ foreign workers will only be granted to employers on condition that the workers concerned enjoy the same remuneration and terms of employment as nationals, as in *Belarus* or *China*, for example.[49] The Committee has noted the existence of similar guarantees in collective agreements concluded between the central organizations of employers and workers. In *Belgium*, for example, discrimination in recruitment and hiring procedures is prohibited by collective labour agreement No. 38*ter* concluded on 17 July 1998 between workers' and employers' organizations[50] and by individual collective agreements concluded with temporary work agencies and cleaning enterprises. Realizing that the prohibition of discrimination is not enough in itself to eliminate discrimination in practice even if enforcement machinery is properly applied, some countries[51] have implemented positive action programmes or corrective measures targeting categories of workers who face disadvantages (see box 5.2).[52]

---

[49] *Belarus*: s. 11 of the Draft Act on Foreign Labour Migration adopted on 20 May 1998 by the House of Representatives and approved by the Council of the Republic. *China*: Administrative regulations on employment agencies abroad and draft administrative regulations on the protection of the rights and interests of workers contracted to work abroad, and persons who emigrate in search of employment.

[50] Under article 2*bis* of collective agreement No. 38*ter*, "an employer recruiting candidates shall not treat them in a discriminatory manner. During the procedure, the employer shall treat all candidates equally. He or she shall draw no distinction on the grounds of personal characteristics when the latter have no bearing on the job or the nature of the enterprise, except where this is authorized or required by legislative provisions. An employer shall not in principle draw a distinction on the grounds of age, sex, civil status, medical history, race, colour, national or ethnic extraction or origin, political or philosophical opinions, or membership of a trade union or other organization". With the adoption of this collective agreement, the provision prohibiting discrimination becomes prescriptive and legally coercive. According to the Confederation of Christian Trade Unions of Belgium, it is planned to make it mandatory by royal order, at the request of all the social partners.

[51] For example: *Australia, Belgium (Flemish region), Canada, Netherlands, New Zealand, United States.*

[52] For further details on this point, refer to J. Faundez: *Affirmative action: International perspectives* (Geneva, ILO, 1994); and J. Hodges-Aeberhard and C. Raskin (eds.): *Affirmative action in the employment of ethnic minorities and persons with disabilities* (Geneva, ILO, 1997); and *A manual on achieving equality for migrant and ethnic minority workers*, draft, op. cit., Ch. III, s. 7.

Box 5.2

Positive action measures

The recent *Manual on achieving equality for migrant and ethnic minority workers*, which is the final output of the ILO project "Combating discrimination against (im)migrant workers and ethnic minorities in the world of work", deals extensively with different kinds of positive action measures which are intended not only to prohibit discrimination, but to encourage the advancement of members of designated groups and to convince employers and other labour market gatekeepers' to adopt and implement schemes that ensure equal opportunities for all members of society by eliminating existing disadvantages. The measures outlined include:

Measures to encourage job applications by members of ethnic minority or migrant groups

Such measures seek to encourage members of designated groups to apply for jobs in general or for specific vacancies in order to increase the pool of candidates from which a company can choose. They include company presentations in schools and universities with a large number of minority students, vacancy advertisements in newspapers read especially by migrant or ethnic minority groups – possibly translated into the most relevant migrant and ethnic minority languages (this measure can aim at potential applicants and/or their parents), and "networking" efforts targeted particularly at migrant and ethnic minority groups.

Measures to improve the qualifications of minority applicants

Rather than relying on the existing pool of applicants, these measures attempt to increase the number of potential job candidates by ensuring the availability of more qualified migrant and ethnic minority workers. Possible measures include pre-employment training or scholarships for training targeted primarily at designated group members who lack such skills, offering language courses in the host country's language, and management and leadership training for designated group members.

Measures to eliminate arbitrary barriers

This category of measures is closely related to the prohibition of indirect discrimination in particular, but further enhances this prohibition by adopting positive measures to bring about change more quickly and thoroughly. Measures which focus on the recruitment process include the elimination of tests and requirements which are not necessary to carry out the job or which are culturally biased, anti-discrimination training for labour market gatekeepers, the review of recruitment procedures and interviewing practices to ensure non-discriminatory treatment, and the inclusion of minority group members on selection boards. These measures also apply to promotions.

(continued...)

(concluded...)

Job accommodation measures

These measures are also closely related to the prohibition of indirect discrimination in employment and focus on ensuring a non-discriminatory work environment. They include flexible working hours to allow, for example, the observance of religious traditions by designated groups, dress codes which accommodate cultural and religious imperatives and wishes of minority groups, procedures to deal with cases of discriminatory harassment in the workplace, and the provision of anti-discrimination training for co-workers.

This very useful Manual can be obtained from the International Labour Office in Geneva.

[1] Persons involved in making "hiring and firing" decisions and who all share the basic characteristic that their decisions have far-reaching consequences for the employment prospects and careers of workers, such as personnel managers, trade union officials, staff of public and private employment or placement services, etc.

Source: *A manual on achieving equality for migrant and ethnic minority workers* (draft), op. cit., Ch. VII, s. 2.

409. A further form of legislative action against discrimination is the introduction of sanctions, in the form of imprisonment and/or a fine, for the refusal to employ or the dismissal of a worker by reason of his or her colour, origin or belonging or not belonging to a particular ethnic group, nation, race or religion. The burden of proof may however represent an insurmountable obstacle in the way of achieving a fair and equitable outcome in a case of alleged discrimination,[53] especially if indirect discrimination is involved,[54] which is often the case since this kind of discrimination is illegal in most countries. This difficulty was corroborated by the activity report of the Ombudsman against Discrimination in *Sweden*.[55] Although some countries,[56] as the Committee noted in 1996 in its Special Survey, have opted to ease the burden of proof in regard to discrimination on the ground of sex, the Committee has not seen any similar developments with regard to discrimination in general and on grounds of race, colour, national extraction or ethnic origin in particular. It has however noted that, without reversing the burden of proof, the legislation of some countries, for example section 2697 of the Civil Code of *Italy*, provides that the victims of discrimination may introduce statistical data in support of their allegation of discrimination, while courts in the *Netherlands* and the *United Kingdom* accept that empirical evidence could shift the burden of proof to the defendant, who must then provide legally acceptable reasons for the difference in treatment.[57] The Committee can only encourage governments in this direction,[58] given that these measures are likely to help migrant workers to defend themselves when they are the victims of discrimination in employment.

---

[53] See para. 224 of the General Survey of 1988 on equality in employment and occupation.

[54] As the Committee pointed out in para. 26 of its Special Survey of 1996 on equality in employment and occupation, "indirect discrimination refers to apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion, and is not closely related to the inherent requirements of the job."

[55] The activity report of the Ombudsman against Discrimination for the period 1 July 1995 to 30 June 1997 points out that it is often difficult to prove that ethnicity has been a factor in discrimination against a worker or jobseeker and considers that "the requirements for transferring the burden of proof to the employer should be much smaller than at present".

[56] For example: *France, Germany, Italy, Switzerland.*

(b) Enforcement machinery

410. The enforcement of the provisions of labour legislation and criminal law designed to ensure equality would normally fall to the authorities responsible for ensuring their observance, in particular the labour inspection authorities, industrial relations bodies and the courts and of services responsible for approving contracts offered by employers to migrant workers, as in *Cyprus*, for example. For the effective enforcement of provisions of this kind on the initiative of an aggrieved individual migrant worker, what may be needed is advice and assistance to help the worker bring his or her complaint to the attention of the competent body. This subject will be dealt with below in paragraph 447.

411. Bilateral agreements concerning migration for employment normally contain provisions designed to ensure their application. In particular, they provide that the consular authorities of the country of origin of the migrant workers may present to the authorities of the country of employment any complaints and claims relating to the application of the agreement; and that a joint commission composed of delegates from the States parties may be set up to examine problems and seek solutions. Machinery of this kind provides a channel through which migrant workers can obtain the assistance of the authorities of their home country in having their cases investigated when provisions of bilateral agreements requiring equality of treatment are not respected.

412. As in its Special Survey of 1996 on equality in employment and occupation,[59] the Committee has observed from the information supplied by governments that specific machinery has been set up to secure the observance of general anti-discrimination legislation: (a) institutional bodies are set up which either concentrate on achieving equality in a specific area[60] or have a more general scope of activities.[61] They may have a role which is both advisory and promotional[62] or may have quasi-jurisdictional powers[63] which allow them to examine complaints lodged by victims of discrimination; (b) conciliation/mediation;[64] and (c) codes of conduct.[65]

---

[57] The Committee notes with interest the fact that the Council of the European Union recently adopted a Directive on the reversal of the burden of proof, although this only concerns discrimination in employment and occupation on the grounds of sex. See Directive 97/80/EC. According to art. 4(1) of this Directive, Member States, in accordance with their judicial systems must take the necessary measures to ensure that when an individual feels himself or herself to be a victim of the non-respect of the principle of equality of treatment, and has established, before a court or another competent jurisdiction, the facts which permit the presumption of direct or indirect discrimination, it becomes incumbent upon the defendent to prove that no violation of the principle of equality of treatment has occurred.

[58] On this point see the Special Survey of 1996, paras. 297-302.

[59] Paras. 225-229.

413. As can be seen from these examples, legislation is not in itself sufficient to outlaw discrimination.[66] It needs to be supplemented by effective machinery and practical measures, in particular because the migrant workers themselves, through ignorance or fear of reprisals and by reason of the very facts which lay them open to discrimination, may not be in a position to take the initiative to secure respect for the legislation. It is for this reason that procedures of the kind described above, under which independent persons or bodies are able to take the initiative in investigating violations and enforcing the application of the legislation, are a particularly useful supplement to normal procedures under which the initiative lies with the aggrieved person himself or herself.

---

[60] For example: *Belgium* (Centre for Equality of Opportunity and Combating Racism), *Canada* (Province of Ontario: Employment Equity Tribunal), *Netherlands* (Bureau for Combating Racism), *New Zealand* (Race Relations Conciliator), *Sweden* (Equal Opportunity Ombudsman, Ombudsman against Discrimination), *United Kingdom* (Commission for Racial Equality).

[61] For example: *Australia* (Human Rights and Equal Opportunity Commission), *Canada* (Human Rights Commission), *Netherlands* (Commission on Equal Treatment), *New Zealand* (Human Rights Commission).

[62] For example: *Australia* (National Advisory Committee on Discrimination in Employment and Occupation), *Germany* (Commissioner for Foreigners), *New Zealand* (Ministry of Pacific Island Affairs and Ethnic Affairs Service).

[63] For example: *Australia, Belgium, Canada, United Kingdom*.

[64] For example: *New Zealand* (Race Relations Conciliator), *Sweden* (Ombudsman against Discrimination).

[65] For example: in *Belgium*, the Joint Committee on Temporary Work drafted a code of conduct for the prevention of racial discrimination under the collective agreement of 7 May 1996. Temporary work agencies adhering to this code undertake not to discriminate against temporary workers on grounds of skin colour, race, religion, ethnic origin or nationality either at the selection stage or when placing them with a user enterprise. The agreement also emphasizes the importance of increasing awareness among all of the partners involved in temporary work, i.e. not only temporary work agencies but user enterprises and the workers themselves.

[66] In this respect, *Sweden* states that since the Ethnic Discrimination Act, 1994 entered into force and the Ombudsman against Discrimination was established, the number of ethnic discrimination cases brought before the labour courts was lower than expected when the Act was introduced; in view of this the Government set up a commission to review the 1994 Act and to make recommendations. In May 1998 the Government introduced a Bill based on the commission's recommendations, which may be summed up as follows: (a) the new Act will apply both to direct and/or indirect discrimination and to the whole recruitment process; (b) new obligations are imposed on the employer (duty of investigation and to take corrective measures in the event of allegations, ban on reprisals for complaints concerning ethnic discrimination, duty to take active measures for the promotion of ethnic diversity at work); and (c) it is proposed that the Ombudsman be empowered to make representations to the Anti-Discrimination Board requesting that an employer be subpoenaed to take active measures and that the enforcement of the Act be entrusted to the Ombudsman and the Anti-Discrimination Board. See also footnote 72 of this chapter.

414. Finally, no legislation can be considered effective if the victims do not make use of the protection offered by the law for fear of possible reprisals by the accused. This is particularly true in relation to discrimination in employment and occupation as a special dependancy relationship exists between the worker and the employer. Few migrant workers, for example, are likely to initiate a procedure for discrimination on the grounds of race against their employer for having been overlooked for promotion, as such an action carries a high risk of damaging the relationship with the employer. For this reason, it is important to include in anti-discrimination legislation, provisions specifically intended to protect victims of discrimination and persons called to witness, from potential reprisals of the employer, whoever he or she may be.[67] The Committee also considers that the creation of competent bodies specific to migrant workers, as in the *Netherlands*, *United Kingdom* and *United States*, to which migrant workers can present complaints, should be encouraged. In the Committee's opinion, specialized bodies may have the necessary expertise in the field of migration that bodies which deal with general matters may not have.

2. Measures designed to promote equality of opportunity and treatment

415. The Committee has recalled on several occasions that the absence of discriminatory legislation, or even the existence of legislation prohibiting discrimination and providing reparations against infringements, is not sufficient to ensure equality of opportunity and treatment in practice. An *active policy* to secure acceptance and observance of the principle of non-discrimination by society generally, and to assist migrant workers and their families to make use of the equal opportunities offered them, are essential elements in the policy provided for in the 1975 instruments.

416. Article 12 of Convention No. 143 sets out three types of measures to be taken, by methods appropriate to national conditions and practice, to promote the effective observance of the policy of equality of opportunity and treatment. These include the contribution to be made by employers' and workers' organizations and other appropriate bodies, measures to inform and educate the public and educational programmes and other measures to assist migrant workers and their families to exercise their rights and share the advantages enjoyed by nationals. These three types of measures will be considered in the following paragraphs.

---

[67] For example: *Netherlands* (Equal Treatment Act 1994), *United Kingdom* (Race Relations Act, 1976) and the *United States* (Title VII of the Civil Rights Act, 1964) include such provisions in their legislation.

(a) Cooperation with employers' and workers' organizations and other bodies

417. Article 12(a) of Convention No. 143 calls on States to seek the cooperation of employers' and workers' organizations and other appropriate bodies in promoting the acceptance and observance of the national policy in respect of migrant workers.

418. An important means of securing such cooperation is to associate these organizations in the formulation of national policy in regard to immigrants and in measures to implement that policy. In a number of countries, employers' and workers' organizations are represented in a national body with general competence (economic and social councils, labour advisory councils, etc.) and/or in specialized bodies responsible for migrant workers,[68] which the government consults on such matters as immigration policies and practices, issues relating to the employment of foreign workers and measures to assist migrant workers and their families to adapt to the host society. The Committee noted with interest that in *Belgium* agreements have been concluded between the public authorities and the social partners specifically to combat discrimination against migrant workers.[69]

419. As well as collaborating with the public authorities, employers' and workers' organizations can themselves play an important part in promoting equality of opportunity and treatment for migrant workers.

420. The information obtained in the course of the preparatory work for the adoption of Convention No. 143[70] shows that trade unions may provide direct assistance to migrant workers, for example by setting up *specialized offices* to which they can come for advice on employment matters, or *permanent committees* to deal with occupational and social problems including such matters as housing and schooling, or by publishing brochures and periodicals in the principal immigrants' languages giving practical information on administrative formalities, working and living conditions, etc. The contribution which employers' and workers' organizations can make to the provision of social services for immigrants is indeed recognized in Paragraph 25(2) of Recommendation No. 151. Despite the growth in migration for employment which has occurred since the adoption in 1975 of Convention No. 143 and Recommendation No. 151, the Committee has received very little information on this question in government reports and in the comments received from employers' and workers' organizations. The Committee notes the concern of the World Confederation of

---

[68] For example: see para. 344.

[69] In *Belgium (Flemish region)* the social partners concluded an agreement with the public authorities with a view to bringing down the unemployment rate among migrants in this region to the average level for the region as a whole. Under the agreement positive action plans will be adopted jointly with sectors, enterprises and public institutions (such as placement services), as well as plans to promote training among migrants.

[70] ILC, 59th Session (June 1974), Report VII(1), p. 26.

Labour in relation to the represssion to which trade unionists and members of NGOs may be subjected while working for the protection of migrant workers.

421. Another means of action open to representative organizations is the inclusion of appropriate provisions in *collective agreements* as in *Côte d'Ivoire*.[71] Some collective agreements, for example, contain special provisions designed to cater for the particular needs of migrant workers (time off to attend language courses, possibility of observing religious festivals, etc.). These agreements may also be issued in the principal languages of the migrant workers affected by them.

422. Another aspect of the contribution which employers' and workers' organizations can make to national policy in respect of migrant workers is by *informing and educating their members* in order to gain their acceptance and support in the implementation of the policy: the attitudes of employers and of fellow workers at the workplace will indeed play a large part in determining the extent to which migrant workers in fact enjoy equal opportunities and equal treatment. It would seem appropriate that occupational organizations should be used as a channel for providing information for fellow workers, foremen and supervisors about the situation and the problems of migrant workers, a task assigned to the social services for migrants by Paragraph 24(e) of Recommendation No. 151. The social partners will be all the better equipped to provide support of this kind to the national policy if they are directly associated in the formulation of that policy. Although no reference has been made in governments' reports to measures taken to this end by national organizations, in their comments annexed to their Government's reports, the Employers' Confederation of *Sweden*[72] and the Confederation of Christian Trade Unions of

[71] s. 44 of the Interprofessional Collective Convention of 20 July 1977 recalls s. 31.2 of the Labour Code which stipulates that all employers are obliged to ensure that equal work or work of equal value is rewarded with equal remuneration between workers regardless of their sex, national extraction, race, religion, social origin, etc.

[72] The Swedish Employers' Confederation (SAF) states that it plays a very active role in combating discrimination in employment. It participated in the European Commission Working Group which drafted the Joint Declaration on the Prevention of Racial Discrimination and Xenophobia and Promotion of Equal Treatment at the Workplace in 1995 on the occasion of the Social Dialogue Summit held in Florence on 21 Oct. 1995. Pursuant to the Declaration, the parties have compiled a compendium of good practice which discusses impediments of various kinds but above all highlights positive examples and the benefits of equality of opportunity in the labour market. The publication also contains ideas and suggestions for changes. In Nov. 1997, at the central level the social partners agreed on a joint appeal to employers' associations and trade union organizations and to enterprises and employees to develop greater ethnic diversity in keeping with the needs of the operation and local conditions. To support efforts at the local level, the social partners have compiled a guide. In addition, during the spring of 1998, at central level the social partners decided to set up a joint council to follow, support and evaluate work for greater diversity in working life and against discrimination. On the other hand, SAF indicated that it takes a negative view of the proposed new Act against ethnic discrimination and regards as wishful thinking the supposition that the proposed legislation would result in an abatement of xenophobia or a lesser degree of discrimination, and that it is also opposed to *Sweden* ratifying Convention No. 97. Changes of attitude are best achieved — it states — by disseminating knowledge and creating an

Belgium[73] have described some of their activities in this field. The limited information provided on this point suggests that employers' and workers' organizations could be further encouraged to enhance their active role in creating positive attitudes among their members.

(b) Informing and educating the public

423. If migrant workers and their families are to adapt successfully to life in the host country, and enjoy effective equality of opportunity and treatment not only in respect of employment and occupation but also in respect of the other matters listed in Article 10 of Convention No. 143, it is necessary to ensure that the national policy designed to promote and to guarantee equality of opportunity and treatment between national workers and migrants lawfully within the territory is *accepted and observed* not only by employers and workers, but by civil society in general. Measures to inform and educate the public are aimed at: (a) improving awareness of discrimination in order to change attitudes and behaviour; and (b) taking account of the right of every migrant in a regular situation to equality of treatment and opportunity in employment. It is with this end in view that Article 12(b) of Convention No. 143 refers to promoting "such educational programmes as may be calculated to secure the acceptance and observance of the policy" and that Paragraph 4 of Recommendation No. 151 specifies that appropriate measures should be taken to foster public understanding and acceptance of the principles of equality of opportunity and treatment.

424. These provisions of the 1975 instruments are modelled on corresponding provisions in Convention and Recommendation Nos. 111. Since the grounds referred to in Convention No. 111[74] may be relevant to public attitudes to certain categories of migrants, the measures taken to combat prejudice on such grounds may also serve to combat prejudice against immigrants. The Committee accordingly refers to its last General Survey of 1988 and its Special Survey of 1996 on equality in employment and occupation, in which it considered measures to educate and inform the public with a view to securing acceptance and

---

awareness which will help to heighten each individual's perception of the unfairness of discrimination. Changes of attitude are accomplished more effectively through joint efforts by government and parliament, employers and trade unions, political parties and immigrant organizations.

[73] Following the publication of the ILO study entitled *Discrimination in access to employment on the grounds of foreign origin: The case of Belgium* (International Migration Papers No. 23, Geneva, ILO, 1998), undertaken as part of the project entitled "Combating discrimination against (im)migrant workers and ethnic minorities in the world of work" mentioned above (see note 2 to this chapter), the Confederation of Christian Trade Unions (CSC) of *Belgium* actively pushed for the adoption of collective agreement No. 38*ter* of 17 July 1998 strictly prohibiting discrimination in recruitment, and has since organized training sessions with its activists and published numerous public awareness brochures.

[74] Under Art. 1(1)(a) of Convention No. 111, "the term 'discrimination' includes [...] any distinction, exclusion or preference made on the basis of *race, colour, sex, religion, political opinion, national extraction or social origin* which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation".

observance of national policies to promote equality of opportunity and treatment.[75] More recently, the European Union declared 1997 the "European Year Against Racism" with the aim of emphasizing the threat that racism, xenophobia and anti-Semitism represent for the observance of fundamental rights and the economic and social cohesion of the Community and raising awareness of the advantages of pursuing integration policies at the national level, in particular with respect to employment, education, training and housing. In order to achieve the goals set by this initiative, the European Union invited the 15 Member States to adopt specific measures at national and Community level, including in the fields of public information and awareness in order to combat the prejudice of which foreigners, among others, are victims. The European Year also led to the establishment of a European Monitoring Centre on Racism and Xenophobia on 2 June 1997. The Committee also notes with interest that *Japan* organizes every June, a month-long awareness-raising campaign on questions relating to migrant workers.

425. Other measures like those described in the 1988 General Survey were mentioned in the reports: the organization of conferences, seminars, workshops and debates on discrimination against foreigners;[76] research programmes on issues affecting the progress of equality of opportunity and treatment;[77] use of mass media, such as radio broadcasts, television programmes, publication of articles, brochures, newsletters, periodicals, advertisements, public information and awareness campaigns;[78] publication of practical guides, manuals;[79] etc.

426. Public information and education should not only cover non-discrimination policies in general but should also ensure that the national population accepts migrant workers and their families as fully fledged members of society.

(c) *Educational programmes and other measures for migrants*

427. An important means of promoting effective equality of opportunity and treatment for migrants is by equipping them to exercise their rights and to take advantage of the facilities offered to them in the host country. It is therefore essential, as is spelled out in Article 12(c) and (e) of Convention No. 143, that they should be fully *informed* of their rights and obligations, that they be given effective *assistance* in the exercise of their rights and that social policy should enable them to share in advantages enjoyed by nationals while taking account of any special needs they may have during their period of adaptation to the society of the host country.

---

[75] Paras. 231-236 of the General Survey of 1988 and para. 287 of the Special Survey of 1996.

[76] For example: *Sweden* (the Ombudsman against Discrimination publishes brochures such as that entitled "Diversity pays", launches public awareness campaigns, the last of which was entitled "Competence can have a foreign surname" and carries out surveys on discrimination experienced by migrant workers, etc.); the *United Kingdom* (as part of the European Year Against Racism in 1997, ministers and representatives of employers' and workers' organizations took part in conferences on practical measures to ensure equality of treatment at the workplace).

[77] For example: *Norway* commissioned a study carried out over three years to examine the labour market barriers encountered by migrants. This study showed that the high level of unemployment among this category of the population compared to the rest of the economically active population could be attributed to their lack of qualifications, language skills and also to the discrimination against them.

[78] For example: *United Kingdom*.

[79] For example: *Finland*.

428. Assistance to migrants at the time of arrival and during the initial period of adaptation has already been considered in paragraphs 131-288 above in connection with the reception of immigrants, where reference was made in particular to services designed to provide immigrants with detailed information on working and living conditions in the host country, to give them initial advice and assistance in settling in and obtaining access to services available to residents generally, and to make available interpretation and translation facilities.

429. Measures of this kind are an essential preliminary step. If, however, immigrants are to be enabled to share in the advantages enjoyed by nationals, as is specified in Article 12(e), measures are needed to assist them on a longer term basis. Some of these measures, concerning the promotion of equality of opportunity and treatment of migrant workers, also have a part to play in the integration of migrant workers and their families in the society of the country of employment and vice versa.[80] Since the Committee has already mentioned these other measures in different parts of this survey, and intends to discuss some of them in the following chapter, suffice it here to recall that the following measures come under a policy of promoting equality of opportunity and treatment, as well as being part of any social policy in favour of migrant workers: language training, further training and retraining, access to the national employment service, access to the courts, and access to social services.

II. Social security

430. Both Convention No. 97 (in Article 6(1)(b)) and Convention No. 143 (in Article 10) provide that equality of treatment must also cover social security.

A. Convention No. 97

431. Under Article 6(1)(b), of Convention No. 97, social security comprises "legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme". This clause also provides for certain arrangements as regards on the one hand "the maintenance of acquired rights and rights in the course of acquisition" (Article 6(1)(b)(i)), and on the other "benefits or portions of benefits which are payable wholly out of public funds, and [...] allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension" (Article 6(1)(b)(ii)). These arrangements relating to the principle of equality of treatment in terms of social security cannot be interpreted, however, as providing a legal basis permitting the automatic exclusion of a category of migrant workers from qualifying for social security benefits. In this respect, the Committee notes that in 1992 the Government of *Australia* requested of the Office an informal opinion[81] as to whether it is in keeping with Articles 6 and 11 of Convention No. 97 to exclude temporary migrant workers from social security benefits on the grounds that they could not satisfy residency requirements which were fixed by legislation. The Office replied that, in light of the preparatory work to the adoption of Convention No. 97: (a) the Convention covers all migrant workers, both those with permanent and temporary residence status and; (b) that Article 6(1) of Convention No. 97 stipulates that States should apply to immigrants lawfully within their territory, treatment no less favourable than that applicable to its own nationals, in respect of certain matters, including social security. The Office thus concluded that the imposition of residency requirements is not contrary to the Convention, in so far as this condition is applicable also to Australian nationals. However, on the other hand, the Office recalled that Article 6(1)(b)(ii) of Convention No. 97 permits exceptions to the equality of treatment arrangements in two situations: first, concerning benefits or parts of benefits which are payable solely from public funds, and second, benefits paid to persons who do not satisfy the conditions required for a normal pension. From this, it appears that it is not contrary to the Convention that temporary migrant workers are excluded from social security benefits relating to these two situations. In other words, the Convention does not provide a basis for the automatic exclusion of any given category of migrant workers from social security benefits. It should be pointed out that, unlike the English version, the French and Spanish texts of Article 6(1)(b), of Convention No. 97 do not mention "invalidity" among the contingencies covered. This omission is, however, of no consequence in view of the general terminology used in this clause, which also includes "any other contingency which [...] is covered by a social security scheme".

---

[80] For example: in *Germany*, while the mandate of the federal government official responsible for the integration of foreign workers and members of their families (Commissioner for Foreigners) covers the integration of these populations, it also includes combating inequalities of treatment which they experience, in particular in employment.

B. Convention No. 143

432. As the preparatory work clearly shows, the inclusion of social security among the fields to be covered by the policy of equality of opportunity and treatment provided for under Article 10 of Convention No. 143 merely restates a general principle already formulated by other instruments.[82] The intention of the

---

[81] See footnote 40 (Ch. 3).

[82] ILO, *Record of Proceedings*, 60th Session (June 1975), Geneva, p. 644, para. 53.

Conference was thus not to go into the technical aspects of the question, still less to challenge the principles already laid down by other instruments. Equality of treatment as regards social security, as provided by Article 10 of the Convention, must therefore be considered in the light of the provisions of Article 6(1)(b), of Convention No. 97, which Convention No. 143 is designed to supplement. Account should also be taken of the provisions of the Equality of Treatment (Social Security) Convention, 1962 (No. 118), although there is one major difference between this instrument and Conventions Nos. 97 and 143. Based as it is on the principle of *reciprocity*, Convention No. 118 prescribes equality of treatment only for nationals of the countries which have ratified the Convention, whereas the provisions of Article 6 of Convention No. 97 and Part II of Convention No. 143 apply to migrant workers and members of their families, whether or not they are nationals of a country which has ratified the Convention in question.

Contributory benefits

433. It should be noted that Article 10 of Convention No. 143 lays down the principle of equality of treatment in respect of social security in a general way and does not therefore exclude non-contributory benefits.[83] Nevertheless, in the light of the intention expressed by the International Labour Conference, namely that the inclusion of social security in Article 10 of Convention No. 143 should not conflict with the provisions of the other Conventions dealing with this subject, it would be possible in the case of non-contributory benefits to allow special arrangements similar to those for example authorized under Article 6(1)(b)(ii) of Convention No. 97 and Article 4(2) of Convention No. 118.

Payment of benefits abroad

434. Part II of Convention No. 143 and Article 6 of Convention No. 97 apply only to migrant workers and members of their families lawfully within the territory of the country of employment. These provisions are therefore not designed to deal with the payment of benefits to beneficiaries residing abroad, although some countries allow this in principle, provided that reciprocity agreements have been concluded on this subject.[84] This question is however dealt with in Paragraph 34, subparagraphs 1(b) and (c), of Recommendation No. 151, at least in so far as it recalls that a migrant worker who leaves the country of employment is entitled, irrespective of the legality of his or her stay therein, to benefits which may be due in respect of any employment injury suffered, to any compensation for annual holidays which have not been used and to reimbursement of social security contributions which do not give rise to benefits.

435. The application of the principle of equality of treatment in respect of social security raises these complex technical problems which have already been discussed in a General Survey carried out by the Committee in 1977.[85] The conclusions of that survey remain generally valid. It should be noted, however, that certain States[86] indicated that equality of opportunity and treatment between nationals and non-nationals in relation to social security is not guaranteed. Concrete examples of the application of the principle of equality of opportunity and treatment in respect of social security between national and migrant workers can be found in certain comments which the Committee has addressed to member States which have ratified one and/or both of these Conventions.[87]

---

[83] The Government of *France* states that it intends to submit to Parliament a proposal aimed at extending coverage of non-contributory benefits to foreigners in a regular situation.

[84] For example: *Belgium, Croatia, Luxembourg, Switzerland.*

III. Trade union rights

436. Article 6(1)(a)(ii), of Convention No. 97 stipulates that equality of treatment must be applied in relation to trade union *membership* and the enjoyment of benefits arising from *collective agreements*. Article 10 of Convention No. 143 binds governments to pursue a policy designed to promote and guarantee equality of opportunity and treatment in relation to "trade union rights". The content of these rights is described in greater detail in Paragraph 2(g) of Recommendation No. 151, which covers membership of trade unions and the *exercise of trade union rights*. This Paragraph also mentions *eligibility* for office in trade unions and in labour-management relations bodies, including bodies representing workers in the workplace.

A. Affiliation

437. In terms of trade union rights, in general, legislation and national practice recognize the right of foreign workers to join trade unions under the same conditions as nationals. However, much legislation contains more or less significant restrictions, relating to nationality and freedom of association: thus, certain States make citizenship a condition for taking office in a trade union,[88] or stipulate that a proportion of the members must be nationals;[89] in other States (or sometimes in these same States), trade union membership is bound to a condition of residence[90] or of reciprocity,[91] or both these conditions. The Committee considers that such restrictions may prevent migrant workers from playing an active role in the defence of their interests, in particular in sectors in which they represent a significant part of the workforce.

---

[85] General Survey of the reports relating to the Equality of Treatment (Social Security) Convention, 1962 (No. 118), ILC, 63rd Session, Geneva, 1977.

[86] For example: *Australia* (prescribed period of residence), *Kuwait*, *Qatar*, *United Kingdom*.

[87] For Convention No. 97, see observations concerning *France* (1996), *Malaysia* (1998), *Zambia* (1995); and for Convention No. 143, see observation concerning *Kenya* (1995).

[88] For example, *Algeria*, *Belarus*, *Czech Republic*, *Qatar*, *Slovakia*, *Thailand*.

[89] For example, *Colombia* (two-thirds of trade union officials must be of Colombian nationality) and *Panama* (75 per cent of officials)

[90] For example, in *Kuwait* (migrant workers must have resided for five years in Kuwait in order to affiliate with a trade union and must present a certificate of good reputation and good behaviour), and in *Lithuania* (migrant workers must be permanent residents).

[91] For example, the *Philippines*.

438. Furthermore, the Committee recalls Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which states "workers and employers, *without distinction* whatsoever, shall have the right *to establish* and, subject only to the rules of the organization concerned, *to join* organizations of their own choosing without previous authorization". Paragraph 63 of the General Survey of 1994 on freedom of association and collective bargaining indicated that this right "implies that anyone residing legally in the territory of a given State benefits from the trade union rights provided by the Convention, without any distinction based on nationality".

B. Eligibility

Nationality

439. Much legislation states that only nationals of the country can be elected to official trade union positions.[92] As the Committee indicated in its 1994 General Survey on freedom of association and collective bargaining, "since provisions on nationality which are too strict could deprive some workers of the right to elect their representatives in full freedom, for example migrant workers in sectors where they account for a significant share of the workforce, the Committee considers that legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country".[93] In this respect, the Committee recalls the numerous comments it has made on this issue, both under Convention No. 143 and Convention No. 87.[94] In some countries, the nationality requirement may only concern a proportion of trade union officials,[95] or is waived when an agreement of reciprocity exists between countries.

---

[92] For example, in *Austria* (only nationals of the European Economic Area), *Bolivia, Colombia, Djibouti, Ecuador, Finland* (only nationals of Nordic countries and the European Union), *Guatemala, Kuwait, Lebanon, Mexico, Morocco, Panama* (the condition of nationality has been removed from the legislation but continues to be inscribed in the Constitution, thus art. 64 states that "the leadership of such associations must be reserved exclusively for Panamans"), *Romania, Togo.*

[93] Para. 118.

[94] For example, under Convention No. 143, comments have been addressed to *Benin* in 1992 and 1993 (it is noted that art. 82 of the new Labour Code has softened this condition and that it now suffices for migrant workers to be regularly resident in the country and to be in possession of his or her civil rights), and under Convention No. 87, comments were recently addressed to *Bolivia* (1998), *Colombia* (1998), *Ecuador* (1997), *Finland* (1997), *Guatemala* (1997), *Mexico* (1997), *Panama* (1997) and *Romania* (1997).

[95] For example: *Luxembourg* (a maximum of one-third of foreign workers); *Rwanda* (the current draft Labour Code stipulates that a maximum of one-third of the members of the direction and administrative committee of a trade union organization may be composed of foreigners).

Residence

440. In relation to those countries in which eligibility is bound by conditions of residence[96] or by conditions of employment and residence,[97] or further by conditions of residence and reciprocity,[98] the Committee recalls that the principle referred to in Article 10 of Convention No. 143 remains that of equality of treatment without condition. In a number of observations which it has made in relation to the application of Convention No. 87, the Committee has invited governments to allow foreign workers to accede to official trade union positions, *at least after a reasonable period of residence* in the host country. In relation to Convention No. 143, the Committee concludes that the legislation of every member State which has ratified this instrument must permit foreign workers to be elected as trade union officials, at least after a reasonable period of residence, the aim of which continues to be the suppression of all conditions of residence.

C. Exercise of trade union rights

441. The question of the exercise of trade union rights is more difficult to address. An examination of the information supplied by governments revealed the existence of legal restrictions founded on nationality, to the exercise of foreign workers' trade union rights, either as trade union officials or as members of an organization. In particular in respect of workplace conflicts, it should be kept in mind that discretionary powers are often at the disposition of the administrative authorities, in terms of deciding upon the expulsion of foreigners. According to the manner in which these powers are exercised, this may constitute a real barrier to the exercise of trade union rights for foreign workers. By way of an example, the Committee has established that in *Argentina*, according to section 95(b)of Act No. 22.439/81 on Migration and Encouragement of Immigration,[99] the Ministry of the Interior can expel any foreigner, regardless of his or her residency situation, if he or she undertakes activities which disrupt social peace, national security or public order. This provision is softened by section 86 which states that the Ministry of the Interior *may* waive section 85 for individuals who are married to an Argentinean, have an Argentinean parent, or have Argentinean children and have more than ten years' residency. It can be questioned whether the large scope of this section ("activities which disrupt social peace, national security or public order") do not constitute a serious threat to the exercise of trade union rights, in as far as potential sanctions can be imposed administratively and that the only possible recourse appears to be through the Minister and not the judicial authorities.

---

[96] For example, the *Central African Republic* (two years), *Chad*, *Guinea* (five years), *Mauritius* (five years), *Niger* (three years), *Rwanda* (five years), *Senegal*, *Venezuela* (more than ten years).

[97] For example, in *Mauritania*, eligibility for trade union office is reserved for *Mauritanians*; however, the draft Labour Code foresees that foreigners who have legally worked in the profession defended by the trade union for a period of five consecutive years may also be eligible.

[98] For example, the *Central African Republic*, *Niger* and *Senegal*.

[99] The Ministry of the Interior may order the expulsion from the Republic of any foreigner, irrespective of their residence status, who: "[...] (b) carries out, either in the country or abroad, activities affecting social peace, national security or public order of the Republic. An appeal shall lie against the decisions of the Ministry of the Interior before the Executive Branch, subject to the requirements and formalities laid down in section 80."

IV. Cultural rights

442. The inclusion of cultural rights in Article 10 of Convention No. 143 was decided during the second discussion of the draft instrument by the Conference. This reference would appear to have been introduced in order to give express recognition to the right of migrant workers to participate in the cultural life of the country and to maintain and develop their own cultural heritage in the same conditions as nationals. The inclusion of cultural rights in Article 10 of Convention No. 143 cannot be considered as anything more than the statement of a general principle whose purpose cannot be to regulate all the matters arising out of its application.

443. As regards the extent to which cultural rights also include the right to *education*, the Committee considered at the time of its first General Survey on migrant workers that the question of education did not in principle lie within the ILO's field of competence. Account is taken of educational matters by the ILO only in so far as the completion of certain studies constitutes a condition for access to certain occupations or professions, or to a given course of vocational training.

V. Individual and collective freedoms

444. The inclusion of individual and collective freedoms in Article 10 of the Convention was the subject of lengthy discussions in the Conference Committee, since certain reservations had been made as regards political rights. The preparatory work shows clearly[100] what is meant by the term "individual and collective freedoms". This refers to freedoms such as freedom of assembly, information, opinion and expression, on which the full exercise of trade union rights depends, as stressed by the Conference in its 1970 resolution concerning trade union rights and their relation to civil liberties. This expression does not cover political rights, even if such rights are to some extent recognized for migrant workers in certain countries.[101]

---

[100] ILC, 60th Session (June 1975), Geneva, Report V(2), p. 17.

[101] For example, the Treaty on the European Union affords all citizens of the Union the right to vote and stand as a candidate in municipal and European parliamentary elections in the host country under the same conditions as nationals.

VI. General conditions of life

A. Housing

445. Both Article 6(1)(a)(iii), of Convention No. 97 and Paragraph 2(i) of Recommendation No. 151 provide that equality of treatment should cover accommodation or housing.[102] In practice, the Committee notes that migrant workers' housing is often the responsibility of employers, as is the case in *Saudi Arabia*, where employers are required under the Labour and Workers' Statute to provide foreign workers they have recruited with decent housing, and in *Singapore*, where the Government has introduced schemes to encourage employers to improve the housing offered to their workers;[103] it may come under the responsibility of the State[104] or the migrants themselves.[105] In some countries, such as *Canada* (*Province of Ontario*) and *Switzerland*, migrant workers must meet residence requirements in order to obtain public housing.

446. Equality of treatment in respect of accommodation, as provided for by Convention No. 97, covers the *occupation* of a dwelling to which migrant workers must have access in the same conditions as nationals. When the Conference adopted Article 6(1)(a)(iii), of Convention No. 97, it was concerned with conditions of hygienic accommodation. A special clause to this effect was not, however, included in this provision, since it might have been interpreted as granting more favourable treatment to foreigners than to nationals. On the other hand, Article 6(1)(a)(iii), cannot be taken to refer to access to home *ownership* or consequently to the various forms of public assistance which may be granted with a view to facilitating property ownership. In these circumstances, the provisions of national legislation reserving for nationals the benefit of various subsidies and other forms of public assistance for the purpose of acquiring the ownership of their own homes, as well as national regulations limiting or restricting the right of foreigners to acquire immovable property, do not come within the scope of Article 6(1)(a)(iii), of Convention No. 97. The Committee notes, however, that in some countries[106] foreign workers are entitled to benefit from such assistance. This consideration would also appear to apply to Paragraph

---

[102] See also paras. 277-282.

[103] These include setting aside public housing units for rental and allowing companies to build dormitories to house foreign workers.

[104] For example: *Antigua and Barbuda*, *United Arab Emirates*.

[105] For example: *United Kingdom (Bermuda)*.

[106] In the European Union, equality of treatment between nationals and citizens of Member States of the Union with regard to housing applies both to the occupation of housing and access to home ownership. See in this respect Judgment No. 63/86 of 14 Jan. 1988 of the Court of Justice of the European Communities (*Commission of the European Communities* v. *Italian Republic*) in which "the Court declares that by permitting under various provisions of its legislation only Italian nationals to purchase or lease housing built or renovated with the help of public funds and to obtain reduced-rate mortgage loans, the Italian Republic has failed to fulfil its obligations under Arts. 52 and 59 of the EEC Treaty".

2(i) of Recommendation No. 151, the provisions of which supplement the 1949 instruments.

B. Legal proceedings

447. In order for migrant workers to effectively exercise their rights to equality of treatment, it is important that they have access to the courts in the same conditions as nationals. Under Article 6(1)(d), of Convention No. 97 equality of treatment must apply in respect of "legal proceedings" relating to the matters referred to in the Convention. This clause is worded in sufficiently general terms to cover not only proceedings before the ordinary courts, but also proceedings before a specialized body competent in labour matters. It also covers general procedural rules, such as legal aid and the deposit of a security to guarantee the payment of costs, in so far as the dispute relates to matters covered by the Convention. Article 10 of Convention No. 143 contains no provisions on this subject but access to justice is a basic human right — without which no other rights can be ensured — which must be guaranteed to all, including migrant workers.[107] Generally speaking, it would appear that this right is recognized for migrant workers but, in view of the lack of specific information, the Committee is unable to assess the application in practice of this essential provision.[108] Finally, the Committee notes that in certain countries, such as *France*, *Netherlands* and the *United Kingdom*, trade unions or other organizations may represent foreign workers in order to defend their rights, including those who are illegally employed.

C. Other fields

1. Employment taxes, dues or contributions

448. Equality of treatment in respect of remuneration may be threatened if the employment of a migrant worker is subjected to a special tax. For this reason, Article 6(1)(c) of Convention No. 97 also refers to the "employment taxes, dues or contributions payable in respect of the person employed". *Australia* asked the Committee whether the fact that employment contributions are set at a different rate depending on whether the person concerned resides in its territory runs counter to this provision of the Convention. *Canada (Province of Quebec)* also draws a distinction between non-residents,[109] who only pay tax on income from sources within the province and residents who are deemed to be taxable in Quebec regardless of the source of the income (in Quebec or elsewhere). The Committee considers that the provisions of Australian and Quebec legislation do not run counter to Article 6(1)(c) of Convention No. 97 in so far as the difference in treatment is based not on nationality, but on residence.

---

[107] See paras. 296-301.

[108] In this connection, the Confederation of Christian Trade Unions (CSC) of *Belgium* states that its legal service often intervenes before the labour tribunal in order to require payment of the minimum wage and that it is very difficult to intervene on behalf of temporary migrant workers who are nationals of States outside the European Union. It also stated that it has signed a protocol of collaboration with the Centre for Equality of Opportunity and Combating Racism, under which complaints submitted concerning racist behaviour on the labour market or in an enterprise are referred to the Centre, which decides jointly with the CSC whether legal proceedings should be taken on these complaints; *Sweden*: the Ombudsman against Discrimination stated that for the period from 1 July 1995 to 30 June 1997 he had received 126 written complaints, 40 per cent of which were lodged by job applicants and 60 per cent by employees. For different reasons, only one of these complaints was tried by the labour court during this period and was ultimately dismissed.

2. *Conditions of life*

449. Paragraph 2 of Recommendation No. 151 provides in more general terms that migrant workers and their families should enjoy effective equality of opportunity and treatment in respect of "conditions of life", which include housing and the benefit of social services and educational and health facilities (Paragraph 2(i)) and also cover "rights of full membership in any form of cooperative" (Paragraph 2(h)).

* * *

450. From the examination of the reports, it appears that the application of the principle of equality of treatment between national and foreign workers raises fewer problems in regard to conditions of work than in regard to access to employment and occupation, social security and trade union rights, as well as recognition of the need to implement an *active* policy designed to *promote* and *guarantee* effective equality of opportunity and treatment for migrant workers, as specified in Article 10 of Convention No. 143.

451. The examination of government reports shows that it is not so much the *principle* of equality of treatment between national and migrant workers in a regular situation which poses a problem, as its application to *all* regular-status migrant workers without distinction as to the length of their stay. As will be seen in the conclusions, a number of countries — in particular those which do not have a system of migration for permanent settlement — mentioned as an obstacle to ratification the fact that a State which has ratified Part II of Convention No. 143 must implement a policy of equality of treatment and *opportunity* for all migrant workers in a regular situation, including temporary migrant workers, i.e. those who are not permanently settled in its territory and are required to leave once their employment or task comes to an end. Generally speaking, many of the rights afforded to migrant workers are only recognized after a given residence period, which migrant workers on time-bound jobs are, by definition, unable to fulfil.

452. Lastly, the Committee can only regret the fact that the large majority of reports did not supply information on the application *in practice* of the provisions of Conventions Nos. 97 and 143 on equality of treatment and opportunity, and merely referred to legal provisions on the subject. As the Committee has pointed out on numerous occasions, while it is essential to adopt provisions laying down equality of treatment and to repeal provisions which are incompatible with this policy, this is not enough in itself to guarantee equality of opportunity and treatment in practice.

---

[109] For foreign nationals, the Tax Law distinguishes between non-residents and "assumed" residents. Non-residents are considered to be those who have resided less than 183 days in Quebec.

CHAPTER 6

MIGRANTS IN SOCIETY

453. It was stated in paragraph 102 above that while the instruments deal principally with migration for employment, a number of provisions take into account the social consequences of migration, including consequences for members of the migrant's family.

Section I. Social policy formulation

454. Paragraph 4 of Recommendation No. 86 encourages Members to "develop and utilize all possibilities of employment and for this purpose to facilitate the international distribution of manpower and in particular the movement of manpower from countries which have a surplus of manpower to those countries that have a deficiency". On a similar note, Paragraph 1 of Recommendation No. 151 encourages Members to formulate a coherent policy for migration for employment, based upon the "economic and social needs of both countries of origin and countries of employment", taking into account "not only [...] short-term manpower needs and resources but also [...] the long-term social and economic consequences of migration for migrants as well as for the communities concerned". The Committee will not linger on these provisions, drafted as they are in general terms, as implementation and application of migration for employment policy forms the basis of this survey as a whole.

A. Social policy

455. A number of provisions in the instruments relate to the formulation of a social policy taking into account the needs of migrant workers and members of their families. Article 12(e) of Convention No. 143 stipulates that Members should "in consultation with representative organizations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment". Paragraphs 9 to 12 of Recommendation No. 151 develop this point.

456. The basic principle of the provisions relating to social policy is to guarantee equality of opportunity and treatment with nationals. Social policy measures directed at the population of the receiving country, such as information campaigns, have been dealt with in detail in paragraphs 423-426 above. This chapter deals more specifically with aspects of social policy which are directed at migrant workers and members of their families.

457. The dualistic element of these provisions specifies that on one hand, migrants and members of their families should be encouraged to integrate into the country of employment, and participate in society on an equal footing with nationals, while on the other, specific measures should be taken to ensure that they are encouraged to preserve their national and cultural identity. Approaches to social policy appear to vary across member States, reflecting various historical experiences with migration and expectations as to the length of stay of migrants.[1] To generalize the vast variety of social policies, it appears that countries which accept migrants for permanent settlement upon entry, such as the traditional migrant-receiving countries of *Australia* and *Canada*, appear more likely to favour policies aiming at both social integration and "multiculturalism", while those which issue permanent resident status after a number of years in the country are more likely to focus on "assimilationist" policies, and those who view migrants as primarily temporary workers are likely to favour voluntary repatriation and reintegration assistance. The following examples serve to illustrate the nature and diversity of social policy objectives.

458. Countries which view migrants as temporary workers tend to adopt social policies which attempt to encourage as many migrants as possible to return to their home countries after completing their period of employment, in the form of voluntary repatriation incentives and reintegration assistance. One example is that of *Germany* which does not admit migrants for permanent settlement on entry, and devotes much of its social policy objectives to encouraging voluntary repatriation through the institution of the Coordinating Agency for Promoting the Reintegration of Foreign Workers.[2] In this respect, *Germany* participates in a number of bilateral agreements with sending countries, including *Greece*, *Italy*, *Portugal*, *Spain* and *Turkey*, which aim to improve young migrants' chances of obtaining a qualification which will be recognized and useful in the home country. These agreements take the form of theoretical courses given in *Germany* in the mother tongue, followed by a five or six week practical training course in the country of origin.

---

[1] For an overview of the evolution of social policy relative to migration in a number of major, migrant-receiving countries, see Stalker, op. cit., pp. 72-75. See also *International migration policies*, op. cit., pp. 45-64.

[2] The objectives of this agency are: "(a) to integrate foreign workers and their families, especially those originating from the former countries of recruitment; (b) to limit further entries from States other than those of the European Community; and (c) to provide assistance towards the voluntary repatriation of foreign workers and members of their families and towards their reintegration in their home countries".

459. The Committee noted a number of reports citing "integration" or "multiculturalism" as the primary social policy objective. Such policies tend to focus upon the mutual adjustment of the national population and migrants to create a society wherein all residents can participate on an equal footing. In other words it involves "tolerating, or even promoting ethnic and other differences in such a way that identifiable groups coexist and interact to produce a heterogeneous but stable society".[3] The Committee draws attention to examples of such policies in several major migrant-receiving countries.

460. *Canada (Province of Quebec)* reported that one of the tasks of the Quebec Ministry for Relations with Citizens and Immigration was to "establish and maintain, for persons settling in Quebec, an integration programme aiming at encouraging their integration into Quebec life". *France* reported that one of its major social policy objectives was to ensure that migrants entering the country through family reunification were integrated successfully, and that identifying particularly vulnerable migrants, such as young migrants and female migrants, was an essential prerequisite to successful integration. The Government also indicated special measures taken at "key moments" in its integration policy, focusing particularly upon the integration of family members.[4] *Italy* indicated that social policy was directed at defining "public measures designed to foster family relations, the social and cultural integration of foreigners resident in it, respect for diversity and the cultural identity of the persons concerned".[5] *Australia* reported its adoption of a multicultural approach to social policy, which focuses upon the need to "maintain, develop and utilize effectively the skills and talents of all [...] regardless of background". Similarly, *Sweden* provided the Committee with leaflets advertising a social policy aiming "at supporting people's economic self-sufficiency and social participation [...] equal rights and opportunities for all, regardless of ethnic and cultural background [...] social unity based on the diversity of society and social development which is characterized by mutual respect and tolerance and which everyone, regardless of background, shall participate in and be jointly responsible for". *Norway* reported that "the Government favours active recruitment of qualified persons with an immigrant background in all levels of [the] public sector. [The] public sector on all levels should reflect the fact that Norway is a multicultural society". The *United Kingdom* reported that "while the Employment Department's policy is one of integration wherever possible, it is recognized that ethnic minority groups could be at a disadvantage when competing in the labour market and the Employment Department has made provision accordingly".

---

[3] Stalker, op. cit., p. 72.

[4] See the Framework Agreement of 22 Nov. 1993 between the Ministers of Social Affairs, Health and Urban Affairs and the Social Action Foundation for Migrant Workers and Their Families.

[5] s. 3(1) of Act No. 40, op. cit.

1. Formulation and implementation of social policy

461. There appear to be a number of ways in which social policy can be formulated and implemented. While most countries did not provide specific responses as to how and by whom social policy is formulated, some examples may serve to illustrate the most common means of so doing.

462. In some countries, such a social policy on immigration is drafted and coordinated by the relevant Ministry, for example, in *New Zealand* by the Ministry of Immigration, and in *Norway* by the Ministry of Local Government and Labour.[6] Other countries, such as *Germany*[7] and *Sweden*, have appointed a Government Delegate or Parliamentary Ombudsman to monitor migration flows and to develop social policy objectives. In *Italy*, the President of the Council of Ministers is obligated to present a policy paper to the Government every three years, which is then submitted to Parliament; and on an annual basis, the Commission for Integration Policies, under the Department of Social Affairs, must present a report on the implementation of social policy.[8] *Burkina Faso* reported that a Permanent National Committee for Migration Issues was established in 1974, and in 1997 *Azerbaijan* established a Government Commission whose main task is to "create a legal framework on migration, in line with international standards, specifically on labour migration and the provision of social and legal protection for migrant workers". In *France* the institution charged with formulating social policy for immigrants changed its name from the National Commission for the Migrant Population to the National Commission for the Integration of the Migrant Population,[9] reflecting a stronger focus upon integration policies.

2. Recent policy changes

463. Several States reported that they were in the process of formulating or adopting new social policies on migration. *New Zealand* indicated a major policy change took place in 1991 with the introduction of the "points system"[10] to regulate migration, and *South Africa* reported that the social policy inherited from the previous administration "was unsatisfactory for a number of reasons", inter alia, as a result of apartheid, and thus national policy was currently being revised.[11] *Slovenia* reported that it is currently formulating an immigration policy relating to "the living conditions, social benefits, possibilities of education, learning the language, preservation of immigrants' culture and the professional, cultural, political and social involvement of immigrants in the life of Slovenian society according to the integration principles of developed European societies" and *San Marino* also reported that it was in the process of reformulating social policy for temporary and permanent residents.

---

[6] Since 1985 the Directorate for Immigration has been responsible for implementing these policies.

[7] In *Germany* the Federal Government Delegate for the Integration of Foreign Workers and Members of Their Families was created in 1978.

[8] ss. 3(1) and 44(1), respectively, of Act No. 40, op. cit.

[9] By Decree No. 93-290 of 5 Mar. 1993.

[10] See footnote 19 in the Introduction.

[11] Information on the formulation of migration policy in *South Africa* can be found at the Government's Internet site.

3. Consultation with employers' and workers' organizations

464. Very few States provided information as to the extent of the social partners' involvement in the formulation of social policy in general, but some indicated that this was routine practice. For example, *San Marino* reported that "the social partners participate in the committees that oversee the management of national social policy", and *Australia* indicates that the Department for Immigration and Multicultural Affairs (DIMA) has an active partnership with business associates, universities and government agencies and has worked closely with the Department of Workplace Relations and Small Business to "ensure that legislation and information regarding the new workplace bargaining environment takes account of the particular needs of workers from diverse linguistic and cultural backgrounds". *Germany* reported that the federal Government and German industry have collaborated in establishing a coordinating agency for promoting the reintegration of foreign workers, the object of which is to facilitate the reintegration of foreign workers into their home countries, through the promotion of vocational qualifications. *France* reported that the Social Action Foundation which consists of representatives of government, the social partners and NGOs is consulted on social policy.

465. In respect of consultation with other relevant organizations, *Italy* has a provision in its new legislation on immigration which stipulates that "initiatives and activities [of social policy] shall be carried out on the basis of a survey of local needs and integrated area planning, as well as in agreement with foreigners' associations, with the consular or diplomatic representatives of the countries of origin or provenance and voluntary organizations".[12]

466. On the other hand, the *New Zealand* Council of Trade Unions reported that one of the difficulties of application of these provisions was that there was no tripartite consultation in the formulation of social policy.

B. Difficulties in application

467. One country, *Singapore*, reported that the approach it has taken to migration and social policy does not conform with the provisions of the instruments. The Government reported that "Singapore subscribes to the principle of free market in the employment of workers. It is noted that many of the provisions of the Convention/Recommendations require government intervention [...] we feel this may not necessarily be the best approach [...] giving the varied economic, social and political conditions prevailing". The *Falkland Islands (Malvinas)* reported that existing social policy deals principally with nationals, and as the vast majority of migrants "are from English-speaking backgrounds and share similar cultural interests with Falkland Island nationals [...] there has not been any need to alter a social policy to date to accommodate migrants for employment not from English-speaking backgrounds".

---

[12] s. 36(4) of Act No. 40, op. cit.

468. The *Mauritius* Employers' Federation reported that Paragraph 11 of Recommendation No. 151, which recommends that social policy should attempt to "spread the social cost of migration as widely and equitably as possible over the entire collectivity of the country of employment, and in particular over those who profit most from the work of migrants" is unacceptable and constitutes a barrier to implementation.

Section II. Migration and the family

469. Many of the provisions refer to the rights of the family members who are authorized to accompany or join the migrant worker. Some of these relating to equality of opportunity and treatment with nationals have been addressed in paragraph 392 above. The primary focus of this section will be the conditions under which family reunification is encouraged to take place.

A. Family reunification

470. In 1974 an ILO preparatory report to the adoption of Convention No. 143 stated that:

> Uniting migrant workers with their families living in the countries of origin is recognized to be essential for the migrants' well-being and their social adaptation to the receiving country. Prolonged separation and isolation lead to hardships and stress situations affecting both the migrants and the families left behind and prevent them from leading a normal life. The large numbers of migrant workers cut off from social relations and living on the fringe of the receiving community create many well-known social and psychological problems that, in turn, largely determine community attitudes towards migrant workers.[13]

471. A similar point was made again more recently by the ILO when the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, 1997, adopted guidelines which stated "prolonged separation and isolation of family members lead to hardships and stress affecting both the migrants and the dependants left behind, which may give rise to social, psychological and health problems, and even affect workers' productivity. Therefore, family reunification should be facilitated".[14]

---

[13] ILO: *Migrant workers*, Report VII(1), International Labour Conference, 59th Session, Geneva, June 1974, p. 27.

[14] Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, op. cit., Annex I, para. 6.1.

472. When the 1949 instruments were adopted, the most significant portion of migratory flows were due to time-bound labour migration — that is, the primary breadwinner migrating for temporary periods in another country. By the time the 1975 instruments were adopted, in the aftermath of the oil crisis of 1973 which resulted in many migrant-receiving countries tightening their borders, family reunification had started to compete with labour migration as the most common form of migration. In many countries today family reunification remains almost the only legal means of immigration for many prospective migrants.[15] As *Norway*, which adopted a complete ban on immigration in 1975, reports "foreign experts, refugees and persons arriving because of family reunification are the most significant categories excepted from the ban".[16]

473. It should be stressed that Members are not bound by any provision of international law to guarantee family reunification. Article 13(1) of Convention No. 143 stipulates that "a Member *may* take all necessary measures which fall within its competence and collaborate with other Members to facilitate the reunification of the families of all migrant workers legally residing in its territory".[17] The strongest ILO provision in a Convention on the subject is to be found in Article 6 of the Social Policy Convention, 1962 (No. 117) which, with specific reference to migrant workers, reads "where circumstances under which workers are employed involve their living away from their homes, the terms and conditions of their employment shall take account of their normal family needs". The notion of family reunification has caused a certain amount of friction between sending and receiving States, in particular in relation to temporary or time-bound migration.

1. Permanent migrant workers

474. Paragraph 15 of Recommendation No. 86 reads: "(1) Provision should be made by agreement for authorization to be granted for a migrant for employment introduced on a permanent basis to be accompanied or joined by the members of his family; (2) The movement of the members of the family of such a migrant authorized to accompany or join him should be specially facilitated by both the country of emigration and the country of immigration".

---

[15] For information on family reunification policies and practice relating to traditional migrant-receiving States, see Secretariat of the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia: Report on family reunification: Overview of policies and practices in IGC participating States (Geneva, IGC, Mar. 1997).

[16] Quote taken from Ministry of Local Government and Labour, Department of Immigration and Refugee Affairs: *Current issues relating to Norwegian migration policy and the integration of migrants* (Oslo, 1994), p. 1.

[17] Emphasis added. Even the United Nations far-reaching Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families only stipulates that ratifying States should "take measures that they deem appropriate and that fall within their competence to facilitate [...] reunification".

475. As a general rule, family reunification does not appear to have given rise to significant problems for the majority of States who admit migrants for permanent settlement. For example, *New Zealand* indicates that provisions exist for the reunification of "close family members of migrants who have obtained New Zealand residence". Similarly, *Australia* reports that its immigration policy "includes a family reunion component".

476. Countries which do not admit migrants for permanent settlement, but which issue medium or long-term residence permits also do not appear to have confronted major difficulties in relation to facilitating family reunification. For example, the *United Kingdom (Jersey)* reported that "legislation allows for the spouse and minor children of a person who holds a work permit for a period of more than 12 months to accompany that person", and *South Africa* reported that, while at present work permits are usually only granted for an initial period of six months, workers granted permanent residence or permanent work permits are permitted to bring their families with them.

477. The Committee notes with interest the report of *France* which has enacted special measures to facilitate the arrival of family members of permanent migrant workers. These measures include pre-arrival assistance to help the primary migrant prepare for the family's arrival and a post-arrival visit to the family to inform them of social policy, as well as their rights and duties in *France*. The focus of such visits is principally upon young family members and female migrants.

2. *Temporary migrant workers*

478. While Paragraph 15 of Recommendation No. 86 applies only to "migrants for employment introduced on a permanent basis", other provisions relating to family reunification do not contain this limitation. Article 13 of Convention No. 143 extends family reunification to "all migrant workers legally residing in [the] territory". Bearing in mind the exceptions to the definition of "migrant worker" given in Article 11 of this Convention, Members are encouraged to facilitate the family reunification of temporary and even seasonal migrants who are legally resident in the country.

479. In adopting the Guidelines on Special Protective Measures for Migrant Workers in Time-Bound Activities, the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration stated in 1997 that "even in the case of seasonal and special purpose workers countries should favourably consider allowing family migration or reunification".[18] Governments' reports indicate various responses to this kind of exhortation.

480. *Canada* reported that "dependants of temporary foreign workers who accompany the worker to Canada are allowed to work and study in Canada. However, spouses and children of workers are required to obtain employment or student authorizations, as the case may be, prior to commencing work or study". *Barbados* reported that, under the terms of the Canadian Farm Labour Programme, emigration only of workers is permitted between the two countries, not members of their families. *Switzerland* reported that its migration policy does not appear to be in conformity with Article 13 of Convention No. 143, for while migrants with year-long permits can, under certain conditions be permitted to be accompanied by their family, "Swiss law does not authorize family reunification for temporary residents, whether they be seasonal workers, trainees or other foreigners residing in Switzerland for a short period". *Belarus* reports that the conditions for family reunification for all migrants, permanent and otherwise, is regulated by the specific contract between the worker and the employer. In *New Zealand*, entry into the country under family reunification rules depends upon having a "sponsor" who is living legally and permanently in the country, and in *France*, only migrants who have lived legally in the country for a period of at least two years, holding at least an annual residence permit, can apply for family reunification.[19] *Trinidad and Tobago* reported that family reunification is not permitted for temporary migrant workers. Finally, *Israel* reported that no migrants are admitted for permanent settlement and that no family members are authorized to accompany temporary migrants.

---

[18] Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, op. cit., Annex I, para. 6.1.

481. The Committee notes that in some cases of temporary, seasonal or project-tied work, family reunification may be inappropriate. In its 1980 survey of these instruments, the Committee remarked that:

> Clearly, the admission of the families of migrant workers who are to be in the country only for a limited period of time may cause practical problems of accommodation, schooling, adaptation, etc., and it would not seem that it is necessarily called for by the Recommendation, which speaks of "all possible measures" to facilitate family reunification; it may well be considered that it is not possible to take measures to facilitate the short-term stay of the families of seasonal migrant workers.[20]

482. The Committee is of the opinion that separation of a migrant who has been granted permanent residence in a country from his or her family would appear to constitute unreasonable hardship. In the case of migrant workers on time-bound contracts, the individual circumstances of each case should be taken into account when considering whether to authorize family reunification. For some conditions which may be considered, see paragraphs 488-495 below.

3. *Scope of family reunification*

483. Article 13(2) of Convention No. 143 and Paragraph 15 of Recommendation No. 151 define the family as "the spouse and dependent children, father and mother". Paragraph 15(3) of Recommendation No. 86 goes beyond this and states that "favourable consideration should be given to requests for the inclusion of other members of the family dependent upon the migrant".

---

[19] s. 29 of Law No. 93-1027 of 24 Aug. 1993 concerning Immigration Control and Conditions of Entry, Reception and Residence of Foreigners in France.

[20] 1980 General Survey, para. 431. See also Böhning, op. cit., p. 77.

484. The Committee draws attention to some reports which indicate that the scope of family reunification does not appear to conform with the more extensive of these provisions. For example, *Austria* indicated that it considers Paragraph 15(3) of Recommendation No. 151 a major barrier to implementation, reporting that "family immigration within the meaning of section 20(1) of the Foreigners Act applies only to the spouse and minor children [with the exception of] nationals of [certain] third States granted favourable conditions under EU law, this does not apply to dependent relatives in an ascending line as well". Similarly, in *France*, only the spouse and minor children born to the couple are permitted to be reunified with the migrant worker,[21] as is the case in the *United Kingdom*, unless "exceptional circumstances" pertain.[22]

485. The Committee notes with interest however from a number of reports that the countries concerned appear to accept a wider interpretation of "family" than that given in the instruments. For example, the *Syrian Arab Republic* indicates that migrants are not forbidden from bringing their spouse, children and other "persons for whom they are responsible", and *Italy* reports that family reunification regulations apply to "(a) spouse not legally separated; (b) dependent minors also of the spouse or born outside wedlock, unmarried or legally separated on the condition that the other parent, if known, has given consent; (c) dependent parents; (d) dependent relatives to the third degree unfit to work according to Italian legislation".[23] *Argentina* reported that once legal residence permission has been granted to a migrant worker, the migrant is permitted to apply for reunification with their spouse, children under the age of 21, parents and handicapped children without limit of age. *Cyprus* reports that there is no limit for family reunification (in the case of regular migrants), and that it interprets the term to include the spouse, dependent children, parents, brothers, sisters and grandchildren; and *New Zealand* authorizes the entry of individuals who belong to any of the following three categories: (a) spouse of a New Zealand citizen; (b) individual in a de facto homosexual relationship with a New Zealand citizen or permanent resident; or (c) parents, dependent children and single adult brothers, sisters and children of a New Zealand citizen or permanent resident. In *Norway* a spouse over the age of 18, a cohabitant of the opposite sex with whom the migrant has been living for at least two years, unmarried children under the age of 18, children who the migrant intends to adopt, unmarried dependent children under the age of 21, parents of foreign nationals under the age of 18 and unmarried siblings under the age of 18, single elderly parents with no family in the country of origin, as well as children of any age who are wholly dependent upon their parents for medical or personal care are eligible to enter the country under the family reunification policy.[24] *Australia* recently passed legislation to the effect that the definition of a "spouse" of a migrant worker for the purpose of granting visas should be enlarged to include a person of the opposite sex who is in a de facto relationship with another person without necessarily being married to them.[25]

---

[21] s. 29 of Law No. 93-1027, op. cit. In cases where the other parent has died or has abandoned his or her parental responsibilities, children from previous relationships may also be included.

[22] Under "exceptional circumstances" children over the age of 18, parents over the age of 65, uncles, aunts, brothers and sisters who are mainly dependent on the migrant may be granted entry to the *United Kingdom*.

[23] s. 27 of Act No. 40, op. cit.

486. The law and practice of most countries which have supplied information on family reunification indicate that where children are permitted to accompany the migrant worker, this permission depends on their age, their dependency status or their marital status, and examples of all were found in the reports submitted to the Committee. The Committee draws attention to a statement made in its last General Survey that:

> In many cases, of course, children who have reached the age of majority will no longer be dependent on their parents, but problems may well arise for handicapped children after majority and for young persons continuing their studies beyond the age of majority, or unable to find employment in the home country because of lack of employment. The reference in the 1975 instruments to "dependent" rather than "minor" children would seem to indicate that it is the actual situation of the child in relation to his parents, and not his legal status, which should be taken into consideration in deciding whether to admit him under the heading of family reunification.[26]

487. Beyond the actual definition of what constitutes "family reunification", in most cases family reunification is dependent upon conformity with a number of conditions, most commonly the provision of suitable accommodation and sufficient resources to cover living expenses.

B. Conditions for family reunification

1. Accommodation

488. Paragraph 13(2) of Recommendation No. 151 states that "a prerequisite for the reunification of families should be that the worker has, for his family, appropriate accommodation which meets the standards normally applicable to nationals of the country of employment". The Committee stresses, however, that Paragraph 13 of Recommendation No. 151 is intended to ensure the provision of reasonable accommodation for families of migrant workers, and that this provision "should not be interpreted as giving receiving countries the possibility of endlessly preventing family reunification".[27]

489. A significant number of countries which provided information on this subject reported that the provision of adequate housing was a prerequisite to authorization of family reunification. For example, *Germany* reported that family reunification is authorized when, inter alia, the migrant has sufficient accommodation for his or her family, and *Italy* reported that foreigners seeking family reunification must be able to provide, inter alia, "accommodation that meets the minimum standards laid down in regional law on public housing for residential purposes or, in the case of a child under 14 years of age following one parent, with the consent of the landlord of the accommodation where the minor will actually stay".[28] Similar provisions are in place in *Norway* and the Association for Immigrant and Refugee Housing takes this into account when allocating state subsidized housing. In *France*, accommodation which is considered "normal for a comparable French family"[29] is a prerequisite for family reunification and inspections of migrants' housing are carried out by the Office for International Migration. The *United Kingdom (Jersey)* reported that work permits are only issued when adequate accommodation is available for migrants and any accompanying dependants.

---

[24] s. 23 of the Immigration Regulations, 1 Jan. 1991.

[25] Migration Regulations (Amendment) (No. 92) of 1997.

[26] 1980 General Survey, para. 422.

[27] Böhning, op. cit., p. 76.

490. *Switzerland* reported that "it may be the case that the local housing situation [...] does not satisfy regulations (construction, fire, hygiene); in such cases the authorities would decide to refuse or postpone family reunification". *Togo* indicated that where an employer provides a migrant with a permanent contract, the employer must also provide suitable housing for the migrant and his or her family.

491. The Committee notes with interest the report of the *Falkland Islands (Malvinas)* which indicates that, while it previously encouraged the reunification of families, in recent years increasing migration, as well as growth in the national population, has meant that this has "placed a great strain on government housing, education and medical services". As the result of a "housing needs assessment" which was conducted by the Government in March 1998, the Falkland Islands Government is "considering adopting a policy whereby reunification of families will be discouraged where such reunification will place a strain on housing, education and medical facilities", and that "this policy will be reconsidered when there is sufficient housing [...] to accommodate families". The Committee points out that this approach provides a good example of the flexible nature of the provisions. Indeed, Paragraph 16 of Recommendation No. 151 states that "each Member should take full account of the needs of migrant workers and their families in particular in its policy regarding the construction of family housing, assistance in obtaining this housing and the development of appropriate reception services". The Committee notes with interest the report from *Italy*, which indicates that "the regions shall pay contributions to the communes, provinces, common consortia, or public or private corporate entities for health and sanitary improvements to housing units they own [...] and that are designed to provide housing for foreigners".[30] In *France*, new local government agreements established in 1993 take into account the needs of immigrant populations in the framework of programmes which are destined to improve the most disadvantaged districts.

---

[28] s. 27(3) of Act No. 40, op. cit.

[29] s. 29 of Law No. 93-1027, op. cit.

[30] s. 38(1) of Act No. 40, op. cit.

2. Subsistence

492. A number of countries appear to make family reunification conditional also upon the migrant worker assuming financial responsibility for his or her dependants.

493. For example, *Germany* reported that family reunification is permitted when the migrant is "living legally in Germany [...] and can cover the needs of his or her family, as a result of his or her professional activity, his or her own resources, or by other means". Similarly, in *Norway*,[31] family reunification is permitted, inter alia, if the migrant can guarantee subsistence for family members, and in *Switzerland* family reunification can be refused if the worker's income is insufficient to cover the family's living expenses. Italy reports that migrants must be able to guarantee "an annual income from lawful sources no lower than the annual amount of social benefit for two or three family members, triple the annual amount of the social benefit for four or more family members to come".[32] In *France*, migrants must dispose of "stable and sufficient resources [and] insufficient resources cannot trigger a refusal if they are above the national minimum wage".[33] The evaluation of resources in this case is undertaken by the Office of International Migration.

494. The Committee notes with interest the comment made by one sending country, *Pakistan*, indicating that making family reunification conditional upon providing subsistence for family members had the effect that only migrants who "are highly qualified and highly skilled and are able to meet the expenditures incurred on their families in the country of employment from their salaries" will qualify for family reunification, while low-paid, low-skilled workers will not be able to meet such expenses.

3. Other conditions

495. A few States also lay down in law a number of other conditions upon which family reunification depends. In *France*, for example, new regulations mean that the primary migrant applying for family reunification must have entered the country legally, and in the case of polygamous marriages only the first spouse and his or her children are permitted to join the migrant.[34] Reunification of family members may also be refused if the presence of family members is a threat to public order, if they carry an illness which threatens the public order or if they live in *France* already.[35] In the *United Kingdom* reunification is only permitted to family members other than the spouse and children if no relatives in the home country could reasonably support the person.[36] It appears from the reports submitted that such conditions are widespread.

---

[31] s. 22 of the Immigration Regulations, 1 Jan. 1991.

[32] s. 27(3) of Act No. 40, op. cit.

[33] s. 29 of Act No. 93-1027, op. cit.

[34] Act of 11 May 1998, op. cit.

C. Visits to country of origin

496. Paragraph 17 of Recommendation No. 151 states that:

> [...] when a migrant worker who has been employed for at least one year in a country of employment cannot be joined by his family in that country, he should be entitled: (a) to visit the country of residence of his family during the paid annual holiday to which he is entitled under the national law and practice of the country of employment without losing during the absence from that country any acquired rights or rights in course of acquisition and, particularly, without having his employment terminated or his right to residence in the country of employment withdrawn during that period; or (b) to be visited by his family for a period corresponding at least to the annual holiday with pay to which he is entitled.

Paragraph 18 of Recommendation No. 151 states further that "consideration should be given to the possibility of giving the migrant worker financial assistance towards the cost of the travel envisaged in the preceding Paragraph or a reduction in the normal cost of transport, for instance by the arrangement of group travel".

497. Of the sparse information which was supplied on these provisions, *Ghana* reports that "where the period of service to be stipulated in a re-engagement foreign contract, together with the period of service already served under the expired contract, involves the separation of the worker from his family for more than 18 months, the worker shall not begin the service stipulated in the re-engagement contract until he had had the opportunity to return home at the employer's expense".[37] A similarly worded provision can be found in the legislation of *Belize*.[38] While commending such a provision in principle, the Committee points out that the period specified in Recommendation No. 151 is 12 months.

498. *New Zealand* reports that while there are no restrictions on migrants travelling abroad to visit their families, if they are residents of New Zealand, they must be in possession of a returning resident's visa to re-enter the country. *San Marino* confirmed that migrants can leave the country during the period of annual leave without prejudice to the continuation of work or residency, as did *Norway*, on condition that the relevant permit does not expire during the period of absence. On the whole, no major difficulties are reported to have arisen for migrant-receiving countries in this respect.

499. In relation to subsidizing the travel costs of migrants' home visits, however, no countries reported undertaking any such measures, and *San Marino* and *New Zealand* reported that they did not do so. Given also that no countries provided information on this topic for the last General Survey, the Committee considers that this may be one provision which has not been applied to any significant extent in any migrant-receiving countries.

---

[35] s. 29 of Act No. 93-1027, op. cit.

[36] s. 56 of the Immigration Act, 1971, as amended on 8 July 1989.

[37] s. 25(1) and (2) of Labour Decree, 1967.

[38] s. 60(2) of Labour Ordinance (No. 15), 1959.

D. Consultation with employers' and workers' organizations

500. Paragraph 14 of Recommendation No. 151 encourages States to consult with employers' and workers' organizations during the formulation of policy relating to family reunification. No information was provided on this particular provision, although attention is drawn to the references to tripartite consultation in paragraphs 464-466.

Section III. Safety and health at the workplace

501. Paragraphs 20, 21 and 22 of Recommendation No. 151 relate to the protection of migrant workers from work-related accidents, and from special health risks, and to the provision of occupational health and safety training, in a language which the worker can understand.

A. Special health and safety risks

502. In the course of the preparatory work for Recommendation No. 151,[39] three types of special health risk to which migrant workers may be exposed were identified: (a) conditions already suffered from in the country of origin (especially forms of parasitosis); (b) disorders contracted in the country of employment where the migrant workers may have inadequate immunity to certain diseases; and (c) physical and psychological disorders peculiar to the process of adaptation to a new environment (particularly digestive disorders and neuroses).

503. Despite the fact that the changes which have occurred in the nature and extent of migration may have reduced the relevance of certain of these risks, the Committee considers that migrants may still be subject to occupational hazards and illnesses to which the national population is not subject. Migration specialists often describe typical migrant occupations as dirty, dangerous and often undertaken in degrading conditions, highlighting some of the causes of the special health risks to which they may be exposed. For example, migrants are frequently employed in seasonal agricultural occupations, or in factory work which national workers may be unwilling to perform due to the transient nature of the work, hazardous working conditions or low pay. The recruitment of migrant workers, and in particular those in an irregular situation, is often a means of reducing costs. For this reason, occupations which are primarily undertaken by migrant workers often do not attract large investments in health and safety at the workplace. The Committee notes that migrant workers are particularly vulnerable to industrial accidents and emphasizes the urgency of reinforcing safety and health mechanisms in such occupations. Also, the Committee notes that in many countries, migrants continue to be more likely to be victims of drug abuse and alcoholism. While the provisions relating to special health risks may no longer apply to many highly skilled or highly qualified migrant workers, the Committee considers that they are essential to protect adequately the most vulnerable groups of migrants.

---

[39] ILC, 59th Session, Geneva, 1974, Report VII(1), p. 33.

504. The Committee noted above, in paragraphs 264-266, the disturbing phenomenon of testing potential immigrants for HIV and AIDS. As regards HIV/AIDS testing once the migrant worker is employed in the host country, the Committee recalls the guidelines relating to testing upon recruitment, or upon application for employment, as covered by the ILO/WHO Joint Declaration on AIDS and the Workplace, adopted in June 1988. In terms of preventative measures, migrant workers and members of their families, as well as national workers, ought to have access to informational and educational programmes on HIV/AIDS, as well as appropriate advisory and information services. In respect of special health risks to which the migrant population may be vulnerable, the Committee also takes note of the discussions of the 12th World AIDS Conference relating to migration and HIV/AIDS infection in June 1998, and considers that, while this issue is not of direct relevance to migrants for employment per se, action programmes aiming to provide information to concerned migrants may be appropriate.

505. Few governments provided information on preventive measures in relation to specific health risks which migrants may face at the workplace. *Bahrain* reported that "all preventative measures must be taken and security measures must be furnished to migrants without cost. They must be informed of the risks which their work entails, as well as the means of protecting themselves from such risks; all necessary precautions to ensure migrants' protection from accidents in the workplace and occupational illness must be taken to the same extent as for national workers".

506. The Committee notes with interest brochures provided by *Finland* directed at female migrants, explaining basic nutritional and dietary requirements for pregnant and breast feeding women, babies and young children.

B. Security and health care

1. Measures to acquaint migrants with occupational safety and health regulations

507. Few reports provided information on this subject. Of those which did, most did not report any significant difficulties in this respect. Some countries indicated that information on safety and health regulations was brought to migrants' attention prior to their arrival in the country of employment. For example, *Bulgaria* reported that employers are obliged to include in contracts with foreign workers, a clause on the rules of industrial hygiene and occupational health,[40] and *Kyrgyzstan* indicated that "the licensing authorities must, before an employment contract is signed, supply workers with appropriate information on [...] personal safety and health".[41]

508. *Canada (Province of Ontario)* reports that employers must "post in the workplace, a copy of [the Occupational Health and Safety Act] and any explanatory material prepared by the Ministry, both in English and the majority language of the workplace, outlining the rights, responsibilities and duties of workers with regard to occupational health and safety". In relation to training, the Government stated that "language requirements [...] are not explicit, but the Act states that the employer shall 'take every precaution reasonable in the circumstances for the protection of the worker'. Making sure migrant workers understand safety regulations and provisions can be considered a reasonable precaution." From other information supplied to the Committee, it appears that this may be the case in other countries as well. For example, the *Czech Republic* reported that "employers are obliged, within their sphere of authority [...] to acquaint employees with legal and other regulations and the safeguarding of safety at work, technical safety equipment and the protection of health at work which supplement their qualification prerequisites for the work, to test regularly their knowledge of these regulations and demands and check on their observance".[42] Again, while the language of instruction is not specified, it appears that in order to fulfil their obligations, employers would have to, where necessary, provide training in a language which the workers can understand.

509. *Canada (Province of Nova Scotia)* reported that "under the Trade Union Act this [provision of information in a language which the migrant can understand] would be problematic [...] the only language Nova Scotia Government agencies use consistently is English and there are no legislative requirements for employers to use other languages. To assume such a responsibility would involve major implications and costs". *Japan* also indicated that, while workers must be informed of health and safety regulations, employers are not obliged to provide such information in languages other than Japanese.[43]

510. Regarding penalties for violation of the provisions, which should, according to Paragraph 22 of Recommendation No. 151, include the imposition of administrative, civil and penal sanctions, only *San Marino* indicated that sanctions are applied regardless of whether the violations involved relate to foreign workers or to nationals; and *Japan* indicated similar provisions. It seems reasonable to conclude that where sanctions are specified for non-conformity with training and information provision on health and safety, sanctions are applied regardless of the nationality of the worker.

---

[40] s. 29 of the Foreign Investments Act.

[41] s. 24 of the Licensing Act Regarding the Job Placement of Kyrgyz Nationals in Employment Abroad, 1997.

[42] s. 133(1)(f) of Act No. 65/1965.

[43] Recognizing this discrepancy, the Ministry of Labour has commissioned the Japan Industrial Injury Prevention Association to prepare supplementary information in Chinese, English, Portuguese and Spanish.

2. *Access to health care*

511. The provision of adequate health care to migrant workers and members of their families outside of employment is an area which is not addressed by either Convention No. 97 or Convention No. 143. The provision of medical services upon arrival in the host country has been discussed in paragraphs 56-66 above. Recommendation No. 86 in Paragraph 12 states that "in the case of migrants under government-sponsored arrangements for group transfer, medical assistance should be extended to such migrants in the same manner as provided for nationals", but no provision extends this access to other categories of migrant.

512. From the limited information available to the Committee on health care, in some countries, such as *Croatia*, the *Netherlands* and *Trinidad and Tobago*, migrants have equal access to health care services with nationals, as is the case in *Australia*, although on a full-cost recovery basis with regard to non-residents. Other countries, such as *Israel*, *Japan* and *Saudi Arabia*, report that it is the employer's responsibility to ensure adequate health care for migrant workers, although no reference is made to members of their families.[44] In the case of *Sri Lanka*, workers recruited for employment in the domestic sector in *Kuwait*, *Saudi Arabia* and the *United Arab Emirates*, the employer is obliged to provide medical care. A small number of countries, including *Australia*[45] and *Croatia* indicate that health care provision may also be regulated by bilateral or multilateral agreements. *Canada (Province of Ontario)* reported that health coverage is only extended to migrant workers who have employment authorization to work with a specific employer and in a specific occupation, which has been issued for at least six months. In relation to health care, the Committee notes with concern the passing of legislation in *France* to the effect that irregular migrants may no longer qualify for medical insurance.[46]

Section IV. Social services

A. Functions of the social services

513. Recommendation No. 151 specifies that a social service should be twofold, assisting first migrant workers and members of their families and secondly, authorities and bodies with responsibilities relating to the conditions of life and work of migrant workers and their families.

---

[44] In this regard, the Committee has requested the Government of the *United Republic of Tanzania (Zanzibar)* on several occasions since 1964 to make the necessary changes in legislation to ensure that members of migrant workers' families are also covered in case of illness.

[45] Bilateral agreements exist with *Finland*, *Italy*, *Malta*, *Netherlands*, *New Zealand*, *Sweden* and the *United Kingdom*.

[46] Act No. 93-1027, op. cit.

1. Activities to assist migrant workers

514. Paragraph 24 of Recommendation No. 151 specifies that the activities of the social services should include assistance in adapting to their new environment; interpretation and translation services; assistance in complying with administrative and other formalities; assistance in making use of education, vocational and language training, health services, social security, housing, transport and recreation. Many activities provided in this regard have already been covered in paragraphs 267-276 dealing with information provision upon arrival in the country of employment.

515. A few countries, such as *San Marino* and *Romania*, reported that while their social services do not undertake any specific programmes relating to assisting migrant workers and members of their families, social services are available to all residents, regardless of nationality. Others, such as *Portugal*, reported that programmes were in place relating to all socially marginalized or vulnerable groups, which would, as appropriate, also include migrants.[47]

516. Several countries, however, reported specific programmes or activities addressing the social needs of migrants. In *Italy*, for example, the social services, on the local as well as the national level, address the problems in particular of non-EU residents by providing, inter alia, information to migrants on their rights and obligations under Italian law; ensuring access to vocational training for migrants; assisting migrants in finding accommodation; providing social assistance in relation to trade union membership, taxes and social security rights; and assisting migrants in cases of work-related accidents and in case of return to the country of origin.[48] *Germany* reported that social counselling services provide guidance to migrants and promote the use of "self-help" measures, give assistance with language handicaps and encourage young migrants to take vocational training courses and, in *France*, the Social Action Fund provides information and reception services to migrants, covering such issues as transport, translation and interpretation services, and housing. *Australia* indicated that the Department for Integration and Multicultural Affairs (DIMA) provides a national translating and interpretation service, 24 hours a day, seven days a week in over 100 languages.

2. Activities to assist authorities and other bodies which deal with migrant workers

517. Paragraph 24 of Recommendation No. 151 also specifies that social services should assist public authorities and other bodies which deal with migrants. In this respect, activities should include: identifying migrants' needs and in adapting thereto; giving the competent authorities information and advice relating to the formulation, implementation and evaluation of social policy with respect to migrant workers; and providing information to employers and fellow workers about the situation and potential problems of migrant workers.

---

[47] In *Portugal*, such programmes focus upon the elimination of poverty and social integration for those living on or below the poverty line.

[48] Act No. 943/86.

518. In many major migrant receiving countries, mechanisms appear to be in place which act as a liaison service between migrant communities and the national authorities. As a rule, these bodies also provide advice to the Government on formulation and implementation of social policy on migration and in some cases can make suggestions for the improvement of related legislation. To take a small number of examples, in *Norway*, a liaison committee was established in 1984 to act as a link between migrants and the national authorities. The Forum for Multi-Cultural Norway is an ad hoc body which advises the Government on pressing issues relating to migration. The members of this Forum are NGOs and the social partners. In the *United Kingdom*, the Commission for Racial Equality advises and provides information to the Government on issues relating to social problems of migrants, and in *Denmark*, the Board for Ethnic Equality advises the Government on improvements to law and practice in relation to migrant workers and members of their families. It appears that in most major migrant-receiving countries, such mechanisms are commonplace, although lack of detailed information prevents the Committee from drawing more general conclusions on this matter.

B. Organization of social services

519. The instruments provide that social services can be provided in a number of ways. Paragraph 25 of Recommendation No. 151 states that they can be provided by "public authorities, by approved non-profit-making organizations or bodies, or by a combination of both", with the corollary that "the public authorities should have the overall responsibility of ensuring that these social services are at the disposal of migrant workers and their families". The following examples illustrate the diverse means by which States provide social services.

520. *Germany*, for example, reported that "with the Länder, the Minister of Labour and Social Affairs supports a special advice service in the social field, to foreign workers and members of their families […] the re-enforcement of the interpenetration of the various social services and social advice to foreigners is considered to be an important task". The Government also indicated the existence of around 600 counselling offices maintained by voluntary organizations, mostly staffed by individuals who originate from the home countries of foreign workers. In *France*, a policy of decentralization has been adopted to provide specialized social services for immigrants on a regional level.

521. Examples of countries using both public authorities and non-governmental associations, include *Switzerland* which reported that:

> […] the Federal Aliens Office has published […] recommendation[s] for the use of local authorities […] these recommendations invite towns and large communities to elect an "integration delegate" who does not belong to the executive, to establish an assistance service for foreigners and to create a consultative organ permitting foreigners to defend their rights and interests to the competent

authorities [...] the assistance services for foreigners are public or private organizations called "working communities" (there are some 50 organizations spread throughout practically all cantons).

In *France*, the Social Action Fund, which assists both migrants and the relevant authorities in coping with migration-related problems, consists of representatives of the Government, the social partners and NGOs.

C. Cooperation and coordination between social services

522. Paragraphs 27 and 28 of Recommendation No. 151 specify that Members should ensure cooperation and coordination between different social services, and should organize and encourage regular meetings on the local, national or regional levels with social services of other sending and receiving countries to exchange information and experiences. No countries provided information on this topic, although the Committee notes with interest the report of *Italy*, which indicates that the social services are mandated to ensure that information is channelled to the diplomatic and consular missions of major sending countries.

D. Consultation with employers' and workers' associations

523. Paragraph 29 of Recommendation No. 151 states that Members should cooperate with employers' and workers' organizations in respect of the provision of social services to migrants and members of their families. Again, very little specific information was provided on this aspect.

524. On a general level, *Switzerland* reports that it regularly cooperates with the social partners, as well as relevant organizations of migrants, on all aspects of migration. *San Marino* reported that the social partners supported many activities relating to programmes and activities relating to migrants, and *Portugal* also reported regular cooperation with the social partners and other relevant organizations. In the case of *Luxembourg*, such collaboration takes the form of the National Employment Commission as well as the Commissariat for Foreigners and the National Council for Foreigners. In contrast, *Estonia* reported that "representatives of workers and employers are not involved in activities provided by Convention No. 143".

Section V. Education

A. Access to schooling

525. Paragraph 10 of Recommendation No. 86 states that "Migration should be facilitated by such measures as may be appropriate — (e) to provide access to schools for migrants and members of their families". The importance of this provision was underlined by the report from *France* which stated that "education plays a major role in the integration of migrant children and teenagers".[49]

526. Many countries do not appear to have encountered any problems with this provision, and allow migrants and members of their families unrestricted access to public schooling. To take some typical examples, *Bahrain* and *San Marino* report that family members have the right to access to schools and colleges on the same basis as nationals. In the latter case, compulsory schooling to the age of 16 is provided to all children free of charge, regardless of nationality. In *Italy*, foreign children are subject to compulsory education, and "all the provisions in force concerning the right to education, access to education services and participation in the life of the school community shall apply to them".[50] In the *United Arab Emirates*, foreign nationals have access to the national education system, which is compulsory in the elementary stage, and free for all in every stage. In the *Syrian Arab Republic*, children of migrant workers have the same right to access to schools under the same conditions as nationals. The Committee notes the report of the *Falkland Islands (Malvinas)* which states that while schooling is not available to any resident beyond the age of 11, the Government pays for any child who has reached that age to complete his or her studies in the *United Kingdom*, including, where required, tertiary education. This provision applies equally to the children of non-nationals employed in the public sector.

527. *Canada (Province of Ontario)* reported that immigrant children, if accepted by a school board to enrol at a school "must be charged fees",[51] while Canadian children resident in the province enjoy these services for free or at a reduced rate. In *New Zealand*, immigrant children have access to schools on the condition that in doing so they do not jeopardize access by national children.[52]

528. Few countries reported on access to education for migrants themselves, though *Canada (Province of Ontario)* reports that "migrant workers are able to access vocational programmes through private vocational schools [...] as well as programmes in colleges of applied arts and technology and universities".

529. As has been pointed out earlier, Convention No. 97 and Recommendation No. 86 do not relate directly to migrants with an irregular status in the country of employment. However, the Committee draws attention to the fact that, given the extent of irregular migration, large numbers of migrants' children currently find themselves in an irregular situation. In respect of access to education, the Committee recalls the Universal Declaration of Human Rights, which states in Article 26(1) that "everyone has the right to education" as well as

---

[49] For mother-tongue teaching, see para. 556.

[50] s. 36(1) of Act No. 40, op. cit.

[51] s. 49(6) of the Education Act.

[52] s. 4(3A) of Education Act, as amended, No. 156 of 1989.

Article 28(1)(a) of the Convention on the Rights of the Child (1989)[53] which has 191 States parties. The UNESCO Convention Against Discrimination in Education (1960) should also be noted. A few examples of how countries have addressed the problem of irregular status migrant children may prove useful.

530. *Canada (Province of Ontario)*, reports that school boards are not permitted to refuse to admit migrant children to elementary or secondary schools because their parents or guardians are illegally in the country. Similar provisions are in place in *Switzerland*, where, in addition, schools are under no obligation to inform the authorities of the legal status or address of foreign children or their parents. On the other hand, in *Norway* the contrary obligation pertains, whereby schools must inform the authorities of migrant children suspected of having entered or resided in the country illegally. The Committee notes such practices with concern, including the adoption of the so-called Gallegly Amendment in the *United States (California)* in 1996, which attempted to discourage irregular immigration by barring children of undocumented migrants from state-funded education (from kindergarten to university).[54]

B. Recognition of qualifications obtained abroad

531. One prerequisite to being capable of competing with nationals in accessing employment is to have qualifications which are recognized in the country of employment. Article 14 of Convention No. 143 states that "a Member may — (b) after appropriate consultation with the representative organizations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas". The same provision is contained in Paragraph 6 of Recommendation No. 151.

532. The recognition of vocational and academic qualifications gained abroad does not appear to be approached consistently by all States. Of the few which provided information on this subject, in *Norway*, the Ministry of Education, Research and Church Affairs is currently drafting new guidelines on the recognition of work experience gained abroad following a survey of recruitment practices in trade and industry in 1992. The Government also reports that "vocational testing will be established for those who have trained in upper secondary school but do not have a certificate". In *Italy*, new legislation on immigration and social policy provides that "within the framework of a national integration programme, and on the basis of agreements with local and regional authorities, educational institutions must promote [...] study tracks leading to the compulsory education certificate or the upper secondary school diploma which would take account of education obtained in the country of origin [and] criteria for the recognition of qualifications obtained in the country of origin, in order to

[53] "States parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) make primary education compulsory, available and free to all."

[54] See *International migration policies*, op. cit., p. 227.

facilitate integration into the school system".[55] In *Australia*, the Federal Department of Workplace Relations and Small Business provides national recognition in metal and electrical trades for permanent residents and skills assessment in most trades for people applying to migrate to Australia. The state governments also provide assistance with skills recognition, such as the Overseas Qualifications Unit in the Victoria Department of State Development, which operates under the coordinating umbrella of the National Office of Overseas Skills Recognition, which is part of the Department of Employment, Education, Training and Youth Affairs. *New Zealand* reports that the New Zealand Qualifications Authority has responsibility for assessing overseas qualifications for their equivalence to those gained in *New Zealand*. In addition, *New Zealand* legislation requires the registration of people wishing to practice certain professions, e.g. doctors, and the Government reports that "human rights jurisprudence establishes that qualifying bodies must have procedures in place for assessing overseas qualifications". In *Israel*, the Ministry of Labour appoints "trade committees" which oversee the recognition of skills obtained abroad, and issue trade certificates, which are a prerequisite for registration at the National Employment Bureau.

533. The Committee notes with interest recent developments in *South Africa* whereby a judge of the High Court of Pretoria dismissed a previous legal opinion of the Human Rights Committee which had ruled that although doctors from abroad were being discriminated against (on the grounds of nationality) in terms of being permitted to practice in the private sector, this discrimination was justifiable under the Constitution. In his recent ruling, the judge stated that "citizenship can never be a criterion for assessing the professional competence of an individual".

534. A small number of States reported that qualifications were recognized on the basis of bilateral or multilateral agreements. For example, in *Jamaica*, the Caribbean Community (Free Movement) of Skilled Persons Act specifies that certain categories of qualified persons do not require a visa to enter any of the Caribbean Community States (CARICOM). Qualifications are evaluated by the University Council of Jamaica. *Slovakia* reports that the recognition of qualifications is regulated by bilateral agreements, although details of these agreements were not given.

535. With respect to problems which were reported, in the case of *Canada (Province of Ontario)*, according to the Ministry of Citizenship, Culture and Recreation, "if temporary workers want to have their academic qualifications or professional accreditation assessed in Ontario, they would have to use the same fee-for-service means as a prospective immigrant or person migrating from another province. Acquiring these assessments is the responsibility of the worker". In the case of *Canada (Province of Nova Scotia)*, the Government stated that this may prove an obstacle to implementation, stating that "it may be difficult to give full value to the qualifications earned in another country". *Estonia* reported that recognition of qualifications is not currently regulated by national legislation, although the Government indicated that this will change when the country joins the European Union.

---

[55] ss. 36(5)(c) and 6(b) of Act No. 40, op. cit.

536. To conclude, the Committee is of the opinion that recognition of qualifications obtained abroad is one area in which significant changes to national policy and practice are in order, to ensure that regular entry migrant workers can access employment on equal terms with national workers.

Section VI. Cultural aspects of social policy

A. Language training

537. Learning the language of the host country is essential to ensuring that migrant workers and members of their families make a smooth transition to the country of employment, and are not marginalized either in the workplace or in society at large. Competence in the host country language may be of particular importance for the spouse and children of a migrant worker who may not work or yet attend school.

538. Paragraph 7 of Recommendation No. 151 states that Members, after consultation with employers' and workers' organizations, should take the necessary measures to ensure that migrant workers and their families are able to learn the language of the host country, "as far as possible during paid time".

539. In *Germany*, the Ministry of Labour and Social Affairs supports the teaching of the German language to migrant workers through the intermediary of the association "German for Foreign Workers", and in particular the Government reports that "courses taking account of occupational needs are becoming more and more important". Since the establishment of this society in 1974, over 1.2 million foreigners have benefited from such courses in Germany, and the Committee notes with interest that some of these courses specifically take into account the needs of migrant women and girls, and couple language training with preparation for vocational training. Other examples include *San Marino*, where "each year, the State promotes and organizes Italian and foreign language courses to assist foreign and local citizens in their everyday work and social exchanges". In *Italy*, schools and institutions must provide courses and events in the Italian language for the benefit of non-Italian speakers.[56] *Finland* reports that "the Government intends to increase services that promote the integration of migrants. The Government aims to give all adult migrants in need of language training, etc., a chance to participate both in [...] education offering them orientation into Finnish society and working life, and basic and complementary vocational training". In the *United Kingdom*, section 35 of the Race Relations Act (1976) permits differential treatment in favour of members of particular groups in order to meet special educational, training or welfare needs which they may have. The

---

[56] s. 36(5)(d) of Act No. 40, op. cit.

Government reports that "this provision has been used to provide English courses for speakers of other languages".

540. The Committee notes the report of *Belgium*, which indicates that the German-speaking community has organized for the past several years, a programme entitled "integration for all through reading and writing" which is directed at socially marginalized groups, among them migrants and members of their families — aiming to improve their ability to read and write in German and to give a basic knowledge of both French and German.

541. In *Australia*, the Special Broadcasting Service (SBS), a statutory corporation, produces a television series entitled "English at Work", and in *Canada (Province of Quebec)*, "immigrants who live in Quebec and who cannot demonstrate, according to evaluation procedure regulations, a sufficient knowledge of French to enable them to integrate harmoniously into the French-speaking majority community in Quebec and who satisfy certain other conditions specified in law, are eligible for linguistic integration services".

542. The Committee notes with interest the report of *Norway*, which states that "hitherto, immigrants [...] have been offered 500 hours of tuition in the Norwegian language including basic information about the Norwegian society. The offer will now be extended, so that the participants may receive tuition until they have attained a specific level of proficiency in Norwegian".

543. Of the countries which reported problems with this provision, the *Falkland Islands (Malvinas)* reported that "migrant workers in the Falkland Islands are almost exclusively from English-speaking backgrounds. Given the very small population of the Falkland Islands, there is not the financial or manpower resources at the present time to enable the country to cope with a large influx of non-English-speaking migrants". However, the Government also reports that English as a foreign language classes are given outside working hours for non-native speakers. The Committee also notes that, according to brochures designed for the use of prospective migrants to *New Zealand*, in order to migrate "at least one member of the family who is over 17 must be able to read, understand and respond to questions and conduct a conversation in English about yourself, your family and your background", and considers that such a provision may be out of keeping with the spirit of the instruments, which deal with language tuition after arrival, rather than as a condition for entry.

544. The Committee has not received any reports which indicate that language classes take place during paid working hours, as specified in Recommendation No. 151.

B. Awareness-raising programmes

545. Article 12(c) of Convention No. 143 stipulates that Members should "take measures, encourage educational programmes and develop other activities aimed at acquainting migrant workers as fully as possible with the [social] policy, with their rights and obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection".

546. Few receiving countries reported instigating such measures under this provision. With specific reference to this provision, the *Falkland Islands (Malvinas)*, for example, reported that relevant legislation is brought to the attention of each migrant worker, although the Government is of the opinion that "it is the responsibility of the employer to take measures to acquaint migrant workers as fully as possible with government policy and law". In *Ghana*, the Government reports that "summaries of laws relating to contracts shall be provided to employers and workers concerned [which] shall be posted in conspicuous places on the premises of the employer for the information of the employees".

547. The Committee notes with interest the initiatives taken by a small number of migrant sending States to ensure their nationals are informed of policy and practice in countries of employment. In *Tunisia*, for example, the Direction of Emigration and Labour is mandated to maintain an information service for the use of Tunisians abroad. In the *Philippines*, the Department of Foreign Affairs is mandated to "undertake the necessary initiative such as [...] an assessment of rights and avenues of redress [...] that are available to Filipino migrant workers who are victims of abuse and violation [...] if a complaints machinery is available under international or regional systems, the Department of Foreign Affairs shall fully apprise the Filipino migrant workers of the existence and effectiveness of such legal options".

548. *Morocco* which reported that "there does not exist, either in legislation or in practice, measures giving effect to Article 12 of Convention No. 143, in particular concerning the establishment of educational programmes and the development of activities to ensure migrants have effective assistance to protect and allow them to exercise their rights", and stated that it considers this a barrier to ratification.

C. Preservation of migrants' cultural identity

549. Article 12 of Convention No. 143 stipulates that "each Member shall, by methods appropriate to national conditions and practice — (f) take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue". Paragraph 7(c) of Recommendation No. 151 supplements this provision.

550. The Committee notes with interest the large amount of information which was provided on this topic, and the variety of initiatives which have been taken to encourage the preservation of national and cultural identity.

1. Preservation of national and ethnic identity

551. Most governments do not report any problems with the implementation of these provisions. For example, the *Falkland Islands (Malvinas)* reported that "the preservation of national and cultural identities of migrant workers is encouraged, although no specific programmes are in place". *Slovakia* reports that it "creates specific space for the support of migrating workers in sustaining their national and ethnic identity, for creating cultural links with countries of origin, including the possibilities of affording knowledge of their maternal language". *Lebanon* reported that "freedom of the individual and of the group as well as the cultural rights of migrant workers are guaranteed according to current legislation".

552. *Sweden* disseminates financial support to national organizations of migrants. In *Belgium* the German-speaking region reports organizing on a regular basis festivities for Spanish migrant workers, aiming to create links between the national population and the migrants. The profits from such activities go towards Spanish organizations who organize cultural events and language classes for Spanish children. In *Viet Nam*, migrant workers are permitted an additional holiday on their national day with full pay. In 1987, the *Philippines* established an Office on Muslim Affairs[57] which aims to ensure "the rights and well-being of Muslim Filipinos with due regard to their beliefs, customs, traditions and institutions, as well as to further ensure their contribution to national goals".

553. *Finland* indicated that, according to section 14(3) of the Constitutional Act, minority groups have the right to maintain and develop their own language and culture. The Constitution of *Slovenia* states that "all persons have the right freely to express affiliation to his nationality or national community, to nurture and express his/her culture and to use his/her language and script".[58] Although few reports provided such information, supervision of many such international instruments as the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), or the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), indicate that a number of ratifying countries have such provisions in their Constitutions or general legislation relating to human rights.

554. The Committee notes with interest a number of initiatives taken by sending countries to encourage links with nationals abroad. For example, the Hassan II Foundation in *Morocco*, aims to open and maintain links between Moroccans resident abroad and their homeland, and to help them overcome any difficulties relating to emigration. The Foundation also contributes towards the teaching of the Arabic language, culture and religious instruction for Moroccans abroad, and supplies material to Moroccan organizations and schools abroad. It also organizes holiday camps in Morocco. Similar initiatives have been taken in

---

[57] Executive Order No. 122-A creating the Office on Muslim Affairs, 27 Apr. 1987.

[58] s. 61 of the Constitutional Act of 23 Dec. 1991.

Tunisia. In *Pakistan*, a Welfare Fund has been established[59] which is dedicated to the social and economic welfare of nationals abroad, which can be used for the establishment of vocational training institutions, educational institutions and the establishment and management of or investment in commercial, industrial or service enterprises.

555. The Committee notes two reports which appear to indicate that the right to practice cultural and ethnic traditions depends to a certain extent upon demonstrating a reciprocal commitment to the host country. For example, *Bahrain* reports that it "authorizes foreigners to create clubs and private schools and to establish places of worship, such as churches and mosques [and recognizes] the language, religion, belief and traditions of foreign workers, within the limits given by Islamic law (the sharia) and by public order". *Australia* reports that "it is the basic right of all Australians, whatever their background, within the framework of an overriding and unifying commitment to Australia, to preserve, celebrate and share their cultural traditions".

2. *Mother-tongue teaching*

556. Few countries reported initiatives to ensure that migrant children receive teaching in their mother tongue, although the majority of reports which provided information on this subject indicated that such teaching was encouraged. *Sweden* in its policy statement, states that "children whose native language is not Swedish should be encouraged to develop that language alongside learning Swedish". *Italy* indicated a provision in its new law which states "the school community shall receive the various languages and cultural differences as a value providing the basis for mutual respect, an exchange of cultures and tolerance; to that end it should promote and facilitate initiatives designed to bring about acceptance, care for the culture and language or origin and holding of joint cultural events". *Germany* reported that, where necessary, migrant students were provided with mother-tongue teaching as well as assistance with homework. *Norway* indicated that mother-tongue teaching is providing when there are at least four immigrant children with the same language background at kindergarten. The Committee notes with interest a brochure received from *Finland* on child care in Finland, for the benefit of migrants, which stresses the benefits of bilingualism for migrant children, and encouraging the parents of such children to speak to them in their mother tongue.

D. Recreational and welfare facilities

557. Paragraph 11 of Recommendation No. 86 provides that migrants and their families should have access to recreational and welfare facilities. In this respect, little information was provided, although it may be reasonable to conclude, as with the case of access to education, this does not tend to provoke major difficulties for regular entry migrant workers and their families in most countries. The Committee draws attention to but one example, that of *Finland*, which reported providing information specifically directed to female migrants and encouraging them to participate in local recreational facilities.

---

[59] Emigration Act, 1979.

* * *

558. To conclude, the Committee notes that, given the fact that most of the provisions which have been discussed in this chapter are included in Recommendations Nos. 86 and 151, they should not in themselves constitute a barrier to ratification of the Conventions, although some member States have reported difficulties in ensuring their application in practice. In relation to section I of this chapter, States do not report any major difficulties arising from the formulation and implementation of social policy in relation to migrant workers, and the Committee notes the variety of approaches which have been taken to this issue in practice. In section II, the Committee noted that while few difficulties appear to have arisen for most States in relation to facilitating family reunification for permanent migrants, extension of such a right to temporary migrants appears to be much less widely applied, although it should be noted that in neither case does an obligation stem from the instruments being discussed in this survey. Where family reunification is not possible, no States reported undertaking measures to assist migrants to visit their families in the country of origin, as encouraged by the instruments. In relation to section III, the Committee concluded that one issue which is not addressed by the instruments but which appears to significantly affect the lives of migrant workers and members of their families is access to adequate health care in the country of employment. Finally, from section V it appears that the recognition of qualifications obtained abroad is far from universally guaranteed, which may create initial barriers to workers in their attempt to enter the labour market in a country other than their own.

CHAPTER 7

EMPLOYMENT, RESIDENCE AND RETURN

559. The instruments under consideration in this survey guarantee migrant workers' rights relating to the extent to which they should be allowed to continue to reside in the receiving country beyond periods of actual employment, and rights relating to their possible return to the country of origin. On the whole, these provisions are for application principally within the jurisdiction of receiving countries, although certain rights relating to return and reintegration also create obligations for the sending country.

560. Summarizing the various provisions relating to employment, residence and return, guidelines adopted by the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration in April 1997 included a recommendation to the effect that:

> Migrant workers and members of their families should not be subject to measures of arbitrary expulsion. Migrants who are the objects of an expulsion order should enjoy due process of law in respect of the expulsion procedure. They should further have the right to claim unpaid wages, salaries, fees or other entitlements due to them.

Section I. Employment

A. Benefits and compensation

561. Paragraph 34 of Recommendation No. 151 provides for certain guarantees to migrant workers who leave the country of employment, regardless of the legality of their stay or employment in the host country. The rights of migrants in an irregular situation have been discussed in more detail in paragraphs 302-309, and rights relating to social security benefits for regular entry migrants were addressed in paragraphs 430-435. This section is accordingly limited to dealing with the additional rights of both regular and irregular migrants upon their departure from the host country.

1. Employment injury benefits

562. Paragraph 34(1) of Recommendation No. 151 states that a migrant worker who leaves the country of employment should be entitled, "irrespective of the legality of his stay therein — (b) to benefits which may be due in respect of any employment injury suffered". As stated in the 1980 General Survey on migrant workers,[1] employment injury insurance or workers' compensation schemes do not always provide for payment of benefits to an individual residing abroad, as required by this provision. Several governments have, however, indicated that this lacuna is filled in practically all cases by bilateral agreements.

2. *Holiday entitlement*

563. Migrant workers, irrespective of the legality of their stay, are also entitled, according to Paragraph 34 of Recommendation No. 151, "(c) in accordance with national practice — (i) to compensation in lieu of any holiday entitlement acquired but not used". No reports indicated either problems or measures taken in this regard, although in the case of regular-status migrant workers, equality of treatment in this regard is likely to be addressed through general labour legislation. However, the Committee takes note of resolution No. 7 of the Fifth Asian-Pacific Regional Conference of the International Federation of Building and Wood Workers, 1995, which drew attention to the delayed payment of wages and non-payment for overtime and rest days for migrant workers in the region.

3. *Reimbursement of social security contributions*

564. In accordance with the same Paragraph, migrant workers are also entitled "(c) in accordance with national practice — (ii) to reimbursement of any social security contributions which have not given and will not give rise to rights under national laws or regulations or international arrangements: provided that where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants".

565. Indicating difficulties in implementation, the *United Kingdom* reported that benefit supplements are only payable abroad as specified under bilateral agreements and that social security contributions are not reimbursed where they do not give rise to benefits.

4. *Liquidation and transfer of property of migrants*

566. Article 7(1)(e) of Annex II to Convention No. 97 obliges States to facilitate the migration process by ensuring that migrants for permanent settlement are permitted to liquidate and transfer their property from the home country to the country of employment. Paragraph 10(d) of Recommendation No. 86 also stipulates that migrants for permanent settlement should be permitted to transfer capital from the home country to the host country. This Paragraph takes account of national variation in that it states that such transfers should occur "within the limits allowed by national laws and regulations concerning export and import of currency". With the exception of *Slovakia*, which stated that the provisions of Article 7 "do not harmonize with national legislation", no governments provided information allowing the Committee to evaluate the application of these provisions.

---

[1] Para. 481.

5. Remittances

567. Article 9 of Convention No. 97 states that "each Member for which this Convention is in force undertakes to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire".

568. The global flow of remittances through official channels was recently estimated by the World Bank to amount to some US$71 billion.[2] Reaching almost two-thirds of the value of official development assistance, this has been recognized as "a major form of transfer of resources" from industrialized to developing countries.[3] Clearly, remittances play a significant role in transferring capital from receiving to sending countries and, given that this transfer is also connected to such issues as family reunification, length of stay, socio-economic integration and so on, the notion of remittances has aroused a certain amount of debate. In the preparatory discussions for the drafting of Convention No. 97 it was stated that: "as long as a migrant has no security of domicile in the country of immigration, he will, in order to secure his bridges, want to send more and more important sums by way of savings home to the country of origin, and this does, of course, as is widely recognized, create difficult problems for the Government concerned".[4]

569. Several governments which provided information on this subject to the Committee, including *Bahrain*, *Belize*, *Germany*, *Israel*, *Oman*, *Saudi Arabia* and the *Falkland Islands (Malvinas)*, reported that migrants are free to transfer any amount of savings or earnings to their home country. Some countries, such as the *Czech Republic*,[5] *Malaysia*[6] and *Antigua and Barbuda*,[7] have established limits on the amount which can be transferred without declaration to the authorities, while others such as *Cyprus,*[8] *Kenya,*[9] *Malawi*[10] and *Tunisia*[11] fix parameters according to a percentage of the migrant's salary or savings. *Portugal* reported that regulations concerning the transfer of capital are the same for nationals and non-nationals. Although such a policy may appear justified on the principle of equal treatment, the Committee, however, points out that non-nationals supporting a family in another country are likely to be more affected by legislation on this subject that their national counterparts, and thus may be, in this regard, detrimentally affected by provisions which treat the two groups as identical.

---

[2] See S. Stanton Russel.: "Migration: Implications for the World Bank", HROWP54, World Bank.

[3] Stalker, op. cit., p. 122.

[4] ILC, *Record of Proceedings*, 32nd Session, 1949, p. 299.

[5] Migrants are obliged to declare amounts over 200,000 Czech crowns.

[6] The Federal Exchange Control Act provides that whenever an amount exceeding 1,000 Malaysian dollars is remitted out of the country, it must be approved by the Central Bank of Malaysia.

[7] Permission of the Financial Secretary is necessary where migrants intend to transfer sums of more than $3,000 or £3,000.

570. *Mauritius* reported that migrants are free to transfer any amount of earnings or savings on the condition that they are in possession of a work permit. Bearing in mind that the definition of "migrant for employment" as given in Convention No. 97 applies only to regularly admitted migrants for employment, this would appear to be in conformity with the Convention. Some countries appear to differentiate between transfer of currency of migrants for permanent settlement and those for temporary stay. For example, *Grenada* reported that no legal provisions exist with regard to remittances, as there are no migrants for permanent settlement in the territory, and other countries, such as the *Czech Republic*[12] and *Kenya*[13] reported differential limits for capital transfer depending upon length of stay. In this regard, the Committee recalls that, unless explicitly stated in the instruments, no distinctions between migrants on the basis of their length of stay are permitted and Article 9 of Convention No. 97 applies to all migrants for employment regardless of the length of their stay. Thus, regulations which distinguish between capital transfer of short-term migrants and that of long-term or permanent migrants may not be in conformity with this Article.

571. The Committee notes the establishment of the Overseas Workers' Investment Fund in the *Philippines*, which aims to provide incentives to overseas nationals to participate in official remittance schemes and to reduce the foreign debt burden,[14] as well as Sri Lankan legislation to the effect that all citizens of *Sri Lanka* employed abroad are obliged to remit a part of their earnings in foreign exchange.[15] According to legislation in *Viet Nam*,[16] nationals working abroad for a limited period of time are required to pay 30 per cent of their earnings to the Government. The Committee considers that such a policy is contrary to the spirit, if not the letter, of Article 9 of Convention No. 97.[17] The Committee notes the proposal made in *South Africa*'s White Paper on Immigration that compulsory remittances will be phased out within five years.

---

[8] Cyprus reports that "normally an immigrant is allowed to transfer not more than 50 per cent of his net earnings on a non-cumulative basis. Each case is considered on its merits".

[9] Up to 50 per cent of earnings.

[10] Under government-sponsored transfer to *South Africa*, up to 60 per cent of wages were compulsorily transferred for encashment on return to the home country.

[11] Up to 50 per cent of earnings. See Decision of the Minister of the Economy and Finance, No. 15 (1990).

[12] Permanent residents are not bound by the same obligation to declare monetary transfers as non-permanent residents.

[13] After a period of residence of four years, the permitted amount a migrant can transfer to the home country drops from 50 per cent of earnings to 20 per cent. See Exchange Control Circular No. 5 of 1966.

[14] Republic Act No. 711 establishing Overseas Workers' Investment (OWI) Fund, 21 Oct. 1991.

B. Alternative employment

572. Article 10 of Annex II to Convention No. 97 stipulates that "if the competent authority of the territory of immigration considers that the employment for which a migrant for employment was recruited [...] has been found to be unsuitable, it shall take appropriate measures to assist him in finding suitable employment which does not prejudice national workers and shall take such steps as will ensure his maintenance pending placing in such employment, or his return to the area of recruitment if the migrant is willing or agreed to such return at the time of his recruitment, or his resettlement elsewhere."

573. *Slovakia* reported that bilateral agreements on the mutual employment of migrants stipulate that when the migrant's employment relationship is terminated for any reason which is beyond his or her control, the recruiting body shall endeavour to find other appropriate employment. *Lebanon*, on the other hand, reported that no such measures were in place, and that the Government was not prepared to undertake the financial implications of ensuring employment or maintenance to migrants in such a situation. Limited information on this provision prevented the Committee from evaluating its application on a broader scale.

C. Appeal against loss of employment

574. Paragraph 32 of Recommendation No. 151 provides that a migrant worker who has lodged an appeal against the termination of his or her employment should be allowed sufficient time to obtain a final decision. If the court rules that the employment was unjustly terminated, the migrant should be entitled to the same remedies as national workers in a comparable situation, as well as sufficient time to find alternative employment if reinstatement is not an available remedy.

575. Few governments included information on this aspect of the instruments in their reports. In effect, the problem which migrant workers face in practice is not the inability to use the same redress mechanisms as nationals and

[15] Passport (Regulation) and Exit Permit Act, 1980.

[16] Decision No. 370 of the Council of Ministers, 1991.

[17] It should be recalled that compulsory remittances were considered by the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration as one form of abusive practice. See box 4.3.

to benefit from the same rights in this regard, but rather the inability to obtain an extension of his or her residency while waiting for the judicial decision. Thus, the *Falkland Islands (Malvinas)* reported that migrants finding themselves in such a situation are allowed sufficient time to obtain a ruling on the condition that their residence permit does not expire during that period. It appears, therefore, that in such a case the migrant has no guarantee of being allowed to remain in the country until he or she obtains a ruling, as suggested in the Recommendation. On the whole, the information supplied to the Committee was not sufficient to enable it to evaluate the implementation of these provisions in practice, although, in general, it appears that the availability of the same remedies as nationals is addressed by equal treatment in the application of labour and other relevant legislation as discussed in paragraph 447 above.

Section II. Residence

576. The instruments contain several provisions relating to the extent to which migrants who lose their employment should be permitted to continue to reside in the host country and the rights which should be granted to them during this time.

A. Non-return in the case of loss of employment

577. Article 8 of Convention No. 143, states that "(1) On condition that he has resided legally in the territory for the purposes of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence or, as the case may be, work permit".

578. Paragraph 30 of Recommendation No. 151 states that regularly admitted migrants ought not be expelled on the grounds of their lack of means or the state of the employment market and the loss of employment should not, in itself, imply the withdrawal of residency permission. Paragraph 31 of the same Recommendation stipulates that migrants who lose their employment should be allowed "sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefit; the authorization of residence should be extended accordingly". Paragraph 18(1) of Recommendation No. 86 discourages States from removing regularly admitted migrant workers from their territory on account of their lack of means or the state of the employment market.

579. Article 8 of Convention No. 143 and the related provisions of the two Recommendations appear to have caused significant problems for States which have ratified the Convention as well as for those which have not. While it should initially be noted that the provisions cited above relate exclusively to regular status migrants, the most commonly cited problem stems from the fact that, unlike Article 8 of Convention No. 97, these provisions make no explicit distinction between permanent entry and time-bound migrants. This point was summarized in the report of *Finland*, which stated "Part I of the Convention does not specify what is meant by the term 'migrant worker'. Thus [...] Article 8 is applicable to all foreign citizens with worker status, irrespective of the purpose of their stay, or the nature or duration of their employment".

580. It appears to be standard practice in many migrant-receiving countries to issue permits for time-bound activities, specifying that the worker must return to his or her country of origin at the end of the contract. In relation to Article 8(1) of Convention No. 143, some countries have interpreted this practice to be contrary to the meaning of the provision, and have taken this Article to mean that once a migrant has been regularly admitted for employment, regardless of the nature of the contract, the country of immigration can no longer insist upon the return of the workers at the end of a specified time-frame.

581. The Committee points out that the practice of returning migrants at the end of a time-bound contract does not, in itself, constitute a violation of the Convention. Article 8(1) refers exclusively to migrant workers who *lose* their employment, as opposed to those whose employment comes to an end as foreseen in the employment contract. Thus, the common practice of specifying a period of time and insisting that migrants return to the home country upon completion of this period, is not in itself in contradiction to this Article, and ought not to be considered as a barrier to ratification. This point was made in the report from *Japan*, which stated, in relation to the Immigration Act,[18] "it should be noted that it is understood that the law does not grant the migrant worker concerned the right to demand to be allowed to continue to stay in Japan".

582. Given this clarification, which may dispel some concerns, a number of States which provided information on this topic do make a *de jure* distinction between treatment of permanent residents and those accepted for time-bound employment.

1. Migrants with permanent residence status

583. In general, application of this Article to migrants who have been granted the status of permanent resident does not pose major problems, and in many countries permanent residents enjoy similar privileges to national workers in the case of loss of employment. In the *Czech Republic*, for example, holders of permanent residence permits are not required to hold an employment permit. Similarly, in *New Zealand*, migrants who have been granted residence cannot be expelled as a result of unemployment. In the *Falkland Islands (Malvinas)*, there are no grounds for revoking a permanent residency permit in the case of unemployment, and "long-term migrants" can continue to seek work for the length of the residency permit which has been issued to them. The *United Kingdom (Jersey)* confirmed that after five years of residency, permit holders and authorized members of their families are not liable to be returned to their home countries for reasons of unemployment. *Austria* and *Switzerland* indicated that migrant workers, even those holding a permanent residence permit can have it revoked if his or her means of subsistence are judged insufficient. *Togo* reported that while loss of employment does not imply withdrawal of a regular migrant's residence permit, a new contract will only be approved if the residence permit is still valid.

---

[18] Immigration Control and Refugee Recognition Act.

2. Time-bound migrant workers

584. More significant difficulties appear to arise when attempting to apply this provision to migrant workers who are recruited for time-bound employment. Such employment may range from seasonal work to short- and medium-term employment which can extend to several years. In such cases, governments report a number of difficulties in ensuring that, should the migrant lose his or her employment prior to the period specified in the contract, residency is guaranteed until the end of the period originally specified in the contract.

585. To illustrate the extent and nature of this problem, a few examples may be cited. For instance, in the *Czech Republic*, non-permanent residents, including "long-term migrants" are not permitted to remain in the country beyond the actual period of employment, regardless of the period of residence specified in the work permit. Similarly, in the *Falkland Islands (Malvinas)* temporary residence permits can be revoked due to a loss of employment. In *Australia*, the Government reports that although loss of employment neither implies illegal status nor automatic cancellation of the work permit, temporary residents no longer employed by their "sponsoring employer" are required to leave the country. *Finland* reported that while loss of employment does not, in practice, lead to loss of residency status, this occurs "only because loss of the job does not even come to the resident permit authority's attention". *Grenada* indicated that if a migrant worker's contract is terminated within two months of his or her entry into the country, they can be repatriated.

3. Conditions for renewal of residency and/or work permits

586. A number of States reported that while residency and employment permits are linked for migrants, both could be renewed should the worker fulfil the same conditions for which the permits were issued in the first place. For example, *Finland* reported that, under certain conditions, a work permit can be limited to a specific job or a specific employer, and "in such cases, a person who loses his or her job will need a new work permit if he intends to continue work in Finland".[19] Similarly, *Norway* reports that renewal of the work or residency permit is based upon conformity with conditions required for issuance of the original permit. Similar provisions appear to be in place in *Bahrain*, *Chile* and *Egypt*, which reported that, while withdrawal of an employment permit appears to imply withdrawal of residency, the migrant is not impeded from making a new application. The Committee notes with interest the approach taken by *Egypt*, where a migrant who reaches the end of his or her contract may apply for a tourist permit and reside in the country for the purposes of seeking employment.

---

[19] Contracts binding migrants to employment with a specific employer or a specific occupation were addressed in more detail in paras. 388-389.

587. The Committee draws attention to the fact that Article 8 of Convention No. 143 extends beyond permitting migrants to reapply for a new work permit, and expressly requires that permission to reside in the State should not be revoked where the migrant loses his or her employment prematurely.

4. Burden on public funds

588. The Committee notes that in a number of countries extension of the residency permit, while independent of the expiration of the work permit, depends upon the migrant not becoming a "burden upon public funds". For example, *Portugal* indicates that "the mere fact that a foreign worker becomes unemployed does not, in itself, constitute a ground for the non-renewal of a residence permit as long as it is established that housing and economic stability of the family are guaranteed".

589. Article 8(1) of Convention No. 143 states that the loss of employment should not "in itself" lead to revocation of work or residency permits. In this respect, therefore, it appears that countries such as *Portugal* which do not automatically demand the return of migrants upon loss of employment, are acting in conformity with the wording of the Convention. However, the Committee draws attention to a comment submitted by the General Union of Workers of Portugal, which inferred that economic stability and provision of accommodation often go hand in hand with paid employment. Thus, when a worker becomes unemployed, in most cases economic stability and continued accommodation cannot be guaranteed.

5. Other comments from governments on non-return in case of loss of employment

590. A significant number of States indicated that Article 8 of Convention No. 143 is incompatible with national law and constitutes a major barrier to ratification. For instance, *Austria* states that the provision of alternative employment to migrants depends, as was seen to be the case with a number of States above, upon reapplication for a new work permit, and in particular states that it is in contradiction with section 8(2)(a) of the Employment of Foreigners Act, No. 218 of 1975. *Germany* indicates that Article 8 of Convention No. 143 is "incompatible with the principle of priority to German workers and comparable foreign workers". *Tunisia* also considers this Article to be a barrier to ratification, on the grounds that according to section 12 of Act No. 68-7 of 8 March 1968, residence permits can be revoked by the authorities if the reasons for which it was issued cease to pertain. *Qatar* indicates that Article 8 constitutes a barrier to ratification and *Morocco* reports that "these provisions do not appear to conform with article 7 of the Dahir of 15 November 1934 [...] which states that '[a migrant] may not prolong his stay in Morocco unless he is granted a new contract or a new permit'". *Lebanon* reports that "the authorized residence of a foreigner may not be renewed [...] unless he obtains the authorization of the Minister of Labour, in conformity with current legislation". In addition to the barriers to ratification of Convention No. 143 cited above, *Switzerland* and *Austria* indicated that Paragraph 18 of Recommendation No. 86 is difficult to implement.

B. Alternative employment, retraining and relief work in case of loss of employment

591. Article 8(2) of Convention No. 143 states that the migrant worker "accordingly shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining".

592. This Paragraph also appears to have caused significant problems for a number of States which provided information on this point. The most common problem appears to stem from difficulties in interpreting the provisions.

593. The Committee recalls a memorandum prepared by the International Labour Office in relation to Article 8(2), in reply to a request for clarification of its terms, which was cited in the 1980 General Survey on migrant workers, paragraph 469:

> It should first be noted that this provision is contained in Part I of the Convention, which deals with migration in abusive conditions, and not in Part II, which deals with national policies to be adopted and applied as regards equality of opportunity and treatment. This distinction is important because under Article 16 of the Convention, ratification may be restricted to either of the two Parts. Moreover, the use of the term "accordingly" seems to indicate that Article 8, paragraph 2, is conceived, not as an end in itself, but as a means of reaching the objective sought in paragraph 1. In other words, the safeguards provided by paragraph 2 are to facilitate restoration of the previous position of the migrant worker who has lost his employment, and should not result either in giving him more rights than he had at the outset or in placing him in a more favourable position than that of other migrant workers who have not lost their employment and remain subject to the conditions laid down in their permits. It would also seem unreasonable that a provision included in the part of the Convention which purports to protect migrant workers against abuse should provide for greater access to employment than the part dealing with equality of opportunity and treatment — which permits the free choice of employment to be restricted for a period, as will be seen below. It is within that framework that the effect of national regulations regarding residence and work permits has to be considered. There are two main observations which should be made.
>
> 8. First, the right to equal treatment which the migrant worker should enjoy in case of loss of employment remains subject to the duration of his residence or work permit. This means, in practice, that a migrant worker who has lost his employment and seeks to change his occupation is not entitled to training for new employment if this would continue beyond the duration of his residence or work permit. The same would apply to alternative employment in a case where the loss of the original employment occurs at a time when the residence permit expires.
>
> 9. Second, the safeguards which a migrant worker should enjoy in case of loss of employment may be subject to such conditions and limitations as are specified in his work permit, but these should not prevent attainment of the objective stated in Article 8, paragraph 1. Thus, if the work permit was originally issued to a migrant worker for a particular category of employment only, the equality of treatment as regards alternative employment which such a worker must enjoy under paragraph 2 of this Article will relate only to the same type of employment.
>
> 10. The arguments set out in the preceding paragraph presupposes that the worker retains his work permit after losing his employment. If on the other hand only his residence permit remains valid, it would seem that the equality of treatment required under paragraph 2 of Article 8 of the Convention cannot be subject to limitations other than those mentioned in paragraph 8 of the present

paper. Accordingly, legislation under which the issue of work permits to migrant workers who have lost their jobs may be refused on the basis of the employment market situation would not be in conformity with the Convention.

594. As previously stated, therefore, it appears that Article 8(2) of Convention No. 143 does not require a State to extend a migrant worker's residence permit in case of loss of employment, but refers only to equality of treatment with national workers for the remainder of the validity of that permit.

595. One Government, that of the *Falkland Islands (Malvinas)*, reported that while no unemployment benefits exist either for nationals or non-nationals, migrants employed within the public sector are permitted to reside for three months beyond the end of their employment in order to find alternative employment.

596. However, it is clear that a number of countries which supplied information on this point, consider Article 8(2) a barrier to ratification of the Convention. For example, *Finland* reports that national legislation is in conflict with this Article and it constitutes a barrier to ratification. *Lebanon* reports that "8(2) is difficult to implement in Lebanon given the current legislation which accords priority to Lebanese workers in both the public and private sector". *Switzerland* reported that "the Federal Act of 25 June 1982 on Obligatory Unemployment Insurance and Compensation in case of Bankruptcy contains no provisions permitting migrant workers to remain in Switzerland while unemployed; in this regard, the sole determining factor is a valid residence permit. For migrant workers in possession of a residence permit with no limit of time, the federal authorities have, nonetheless, recommended the cantons to prolong residence permits, in order to allow unemployed foreigners to find work and to receive benefits to which they have regularly contributed". The *United Kingdom* reports that Article 8(2) of Convention No. 143 constitutes a major barrier to ratification stating that, in relation to mobility between employers and occupations, "foreign workers who are admitted to the United Kingdom may also be governed by restrictions [which] require the worker to remain in the same type of work until the restrictions are removed […] and as permits are generally only issued to skilled workers, they are ineligible for vocational training while subject to work permit conditions". Finally, *New Zealand* reported that current legislation and policy do not guarantee equality of treatment along the lines of Article 8(2) and considers such a provision to be a threat to the protection of employment opportunities for *New Zealand* citizens. This constitutes, in the eyes of the Government, as well as those of the New Zealand Council of Trade Unions, a barrier to ratification.

597. The Committee concludes that Article 8(1) and (2) of Convention No. 143 and the provisions of Recommendations Nos. 86 and 151 which relate to it appear to constitute a major barrier to ratification of Part I of the Convention and implementation of the Recommendations. In some instances, difficulties appear to result from an interpretation of the instruments which does not coincide with the Committee's understanding. In other cases, however, more serious problems have arisen with application of the provisions. Discrepancies between national legislation and the instruments are varied, but the principal problem appears to be blanket application of Article 8 to migrant workers regardless of the length of their employment or residence. Many States have reported that the application of the provision to all migrants, regardless of the nature of the contract or the length of the migrant's stay is incompatible with national law and practice, and see no possibility of ratification as a result. The Committee again recalls that this provision appears only in one part of the Convention, which can be excluded from ratification. The Committee has addressed a number of direct requests relating to this Article in recent years.[20]

C. Refugees and displaced persons

598. With the exception of Paragraph 2 of Recommendation No. 86 which deals with their recruitment, the only Article of the instruments specifically relating to refugees and displaced persons is Article 11 of Annex II to Convention No. 97, which states:

> If a migrant for employment who is a refugee or a displaced person and who has entered a territory of immigration [...] becomes redundant in any employment in that territory, the competent authority of that territory shall use its best endeavours to enable him to obtain suitable employment which does not prejudice national workers, and shall take such steps as will ensure his maintenance pending placing in suitable employment or his resettlement elsewhere.

599. Few governments provided information in relation to this provision. *Slovakia* reported that officially recognized refugees have the same "legal position" as Slovak citizens and can use national employment services. They have the right to choose their occupation freely and have freedom of movement within the Slovak Republic. *Sweden* reported that an amendment to the Aliens Ordinance of 1 July 1992 exempts asylum seekers who meet "certain conditions" from the requirement to obtain a work permit. Thus, refugees and asylum seekers can be permitted to engage in gainful employment. The *United Kingdom* reported that the Employment Service has close links with the British Refugee Council and other organizations with the aim of facilitating the settlement of refugees, and *Norway* reported that refugees and immigrants granted a residence permit on humanitarian grounds are regarded as a "priority group" for participation in a job placement programme which involves enterprises being subsidized by the State. *Lebanon*, on the other hand, indicated that ensuring such services for refugees and displaced persons would entail financial costs which the State is not in a position to cover.

D. Continued residence in case of incapacity for work

600. According to Article 8(1) of Convention No. 97, "a migrant for employment who has been admitted on a permanent basis and the members of his family who have been authorized to accompany or join him shall not be returned to their territory of origin or the territory from which they emigrated because the migrant is unable to follow his occupation by reason of illness contracted or injury sustained subsequent to entry, unless the person concerned so desires or an international agreement to which the Member is a party provides". Paragraph 2 of the same Article stipulates that, in the case of migrants admitted on a permanent basis upon arrival in the country of immigration, the provisions of paragraph 1 shall come into force only after a "reasonable period", and in any case not exceeding a period of five years from the date of admission.

---

[20] *Cameroon* in 1989, 1991, 1995 and 1996; *Germany* in 1992 and 1995; *Guinea* in 1993, 1995 and 1996; and *Slovenia* in 1997.

601. As with Article 8 of Convention No. 143, this Article has stimulated much debate and appears to constitute a barrier to ratification for a significant number of countries. Initially, it should be noted that paragraph 1 applies to all migrants with permanent residence status, while paragraph 2 specifically addresses those migrants who are admitted on a permanent basis *at the time of their arrival* in the host country.

602. *Germany, Grenada, Israel, Japan, Malawi, Mauritius, Netherlands* and *Tunisia* reported that as no migrants are admitted upon arrival on a permanent basis this Article is not applicable. In this regard, the Committee points out that should a Member have no migrants for permanent settlement in the country, then the provisions of this Article are not applicable. *Kenya*, in its most recent report referring to this Article, indicated that after five years of lawful residence a migrant is eligible for a resident's certificate. Upon receipt of this certificate the migrant and authorized members of his or her family cannot be returned to their country of origin on the grounds specified in Article 8 of Convention No. 97. The legislation of other countries, including *Antigua and Barbuda* and *Belize*,[21] follow almost exactly the wording of Convention No. 97. Other countries, such as *Argentina*, report encountering no difficulties with this provision.

603. The *United Kingdom (Bermuda)* reports that while the "number of permit renewals is not limited [...] workers are not viewed as immigrants to Bermuda, but as temporary guest workers no matter how long they and their families may remain in Bermuda". For this reason, the Government indicates that Article 8 of Convention No. 97 could not be implemented.

604. The most commonly cited difficulty with this Article was that in many States residency permits can be revoked when a migrant becomes a burden on public funds, regardless of their residency status. For example, *Switzerland* reports that this Article, in particular the second paragraph, constitutes a major barrier to ratification on the grounds that foreign workers with permanent residence permits can be expelled "if they, or a person for which he is responsible relies continuously and to a large extent upon public funds".[22] *Zambia* cites section 2(1) of the Immigration and Deportation Act, Chapter 122 (1967), which stipulates that "the Chief Immigration Officer may by notice in writing revoke any permit issued under this Act if he is satisfied that the holder […] has become or is likely to become a charge on the Republic in consequence of his failure to support himself and such of his dependents as may be in Zambia". *Finland* reports that migrants holding fixed-term residence permits can be expelled if a "weighty cause" exists. According to a Government Bill (47/1990 session), one reason could be some fundamental change in the grounds for allowing entry. Although health reasons were not mentioned by the Government, it would appear to imply that migrants suffering from an illness or injury which, had they applied for entry into the country with the same affliction, would prejudice their chances of entry, may find their permits non-renewable. Similarly, the *Falkland Islands (Malvinas)* reports that while permanent residence permits cannot be revoked solely on the grounds of illness or injury, they can be if it appears that the individual will become a "burden on public funds […] or if it appears that the holder is unable to adequately maintain himself or his dependents".[23] *Guatemala* reported that workers admitted for permanent settlement cannot be repatriated on the grounds of ill health on the condition they have resided for at least two years in the country.[24] In all these cases, it appears that national legislation is in conflict with the provisions of the Convention.

---

[21] 8A(1) and (2) of the Principal Ordinance as amended by Ordinance No. 1 of 1966.

[22] s. 6 of the Federal Act on the entry and residence of foreigners, of 26 Mar. 1931.

605. Problems appear to have arisen for a small number of States which it appears could be dispelled with relative ease. For example, in its last report referring to this Article, *Nigeria* reported that Article 8 of Convention No. 97 is applied on a reciprocal basis as regard migrants from other member States which have ratified the Convention. The Committee points out, once again, that the provisions of the instruments are not, unless otherwise specified, subject to the principle of reciprocity. The *United Republic of Tanzania (Zanzibar)* indicates that "the question of repatriation because of incapability depends upon the nature of the contract of employment between the employer and the employee". The Committee recalls that the provision in question is binding upon the State, and is not dependent upon the volition of the employer or worker. *Trinidad and Tobago* reported that the provisions do not apply to the national situation, as there is no organized migration into the country for the purposes of employment, and *Lebanon* appears to have understood the provisions to mean that the State is obliged to pay for the repatriation of migrant workers who fall ill. The Committee points that Article 8 of Convention No. 97 applies to all forms of regular migration, organized or otherwise, and that repatriation on the grounds of ill health or injury is a practice which the instruments explicitly discourage.

606. On a more substantial level, *Bahrain* indicates that the authorities can refuse to renew a work permit, or can revoke a work permit which has already been delivered in the case of "incapacity to work for health reasons due to the execution of an employment contract", and that renewal of work permits is only authorized on presentation of a medical certificate indicating that the migrant is in good health and carries no contagious diseases, and the *Syrian Arab Republic* reported that migrant workers can be repatriated in case of illness.

---

[23] s. 11B(1)(d) and (e) of the Immigration Ordinance, 1987.

[24] ss. 2-3 of Ministerial Agreement No. 1, 1971.

607. Other States also view Article 8 of Convention No. 97 as a barrier to ratification. For example, *Austria* reports that while migrants can be expelled for failing to engage in a gainful activity for an uninterrupted period of one year, leave which is taken subsequent to a work-related injury is considered as authorized gainful activity, and for this reason migrants could not be expelled on the grounds of injury. The Government also stresses that residence permit holders who have lived in the country for between five and eight years cannot be expelled on the grounds that they do not have the means to finance their stay or on the grounds that they represent a financial burden to a local authority, although migrants must show that they are actively endeavouring to secure the means of their own subsistence. While the Government considers this an obstacle to ratification, the Committee sees no major discrepancy between this provision and the wording of Convention No. 97, on the essential condition that national workers claiming unemployment benefit and/or retraining allowance and so on, are bound by a similar obligation to prove they are endeavouring to support themselves.

608. In conclusion, the Committee recognizes that Article 8 of Convention No. 97 constitutes a barrier for ratification to many member States, among them a number of major migrant-receiving States. The principal problem appears to arise from the fact that many States continue to revoke or refuse to renew residence permits in cases where ill health or injury prevail, or where the migrant or members of his or her family constitute a burden on public funds. The Committee stresses that security of residence for permanent migrants and members of their families in case of ill health or injury constitutes one of the most important provisions of the instrument, and is concerned that in cases where this is not effectively applied, permanently resident migrants may thus find themselves living under the constant threat of repatriation.

Section III. Return

609. At the end of their period of residence, the migrant and members of his or her family enjoy certain rights pertaining to the process of returning to the home country. The major aspects of the return journey in case of expulsion of irregular migrants has been dealt with in more detail in paragraphs 310-311 above. Accordingly, this section deals with rights of regular migrants returning to their home country at the termination of their period of residence abroad.

A. Exemption from customs duties

610. Article 2 of Annex III to Convention No. 97 stipulates that the personal effects and portable hand tools and equipment of regular entry migrants and members of their families authorized to accompany or join them should be free from customs duties upon return of the migrant and his or her family to the country of origin, providing they have retained the nationality of the home country.

611. While the Articles discussed above fall almost exclusively within the jurisdiction of the migrant-receiving States, this provision is binding primarily upon the migrant-sending State. While few countries provided information on this subject to the Committee, this Article does not appear to pose major problems in practice. In most cases, such as that of the *Falkland Islands (Malvinas)* and *Paraguay*, returning migrants and members of their families are exempt from customs duties on all personal belongings. Only one country, *Slovakia*, reported that this provision was inconsistent with national legislation.

B. Costs of return

612. Article 9 of Annex II to Convention No. 97 states that "if a migrant for employment introduced into the territory of a Member in accordance with the provisions of Article 3 of this Annex fails, for a reason for which he is not responsible, to secure the employment for which he has been recruited or other suitable employment, the cost of his return and that of the members of his family who have been authorized to accompany or join him, including administrative fees, transport and maintenance charges to the final destination, and charges for the transport of household belongings, shall not fall upon the migrant". The guarantee that the migrant will not, in cases of irregularity, pay for his or her expulsion appear also in Article 9(3) of Convention No. 143 and in Paragraph 8(5) of Recommendation No. 151 and have been discussed in paragraphs 310-311 above.

613. A number of governments indicated measures which are taken in advance of a migrant's entry into the host country in order to prevent the cost of repatriation falling upon public funds. The Government of *Antigua and Barbuda* reported that upon granting of a work permit, migrants are obliged to deposit a sum of money which is sufficient to cover "all risk of that person having to be repatriated at the cost of the Colony". Similar provisions are in place in *Kenya*,[25] where a magistrate, on being satisfied that expenses have been incurred in excess of the 5,000 shilling deposit which migrants must provide to enter the country, a warrant can be issued for the levy of such an amount by the "sale of any moveable property" belonging to the migrant. In *Barbados*[26] the amount which a migrant is required to deposit depends upon the country from which he or she emanates, and in *Cyprus*,[27] until such a security is furnished by the employer, the migrant is considered to be in an illegal situation. The *Falkland Islands (Malvinas)* reported that resident permits are only issued to non-nationals if the employer has furnished a bond which binds them to pay the transportation costs of migrant workers and members of their families whenever they leave the territory. The only exceptions are in cases where a migrant worker terminates the contract of his or her own volition, or is dismissed as the result of misconduct. Similarly, in *Bahrain*, the Labour Code stipulates that the employer must cover the costs of repatriation, and in *Mexico* all contracts between Mexican nationals and foreign employers must contain a clause stipulating that the costs of repatriation are covered by the employer. In *Colombia*, employers who engage migrant workers enter into an agreement with the State, to the effect that in cases where the contract is terminated or where the worker is deported or expelled, the employer will cover the cost of the return journey of the worker and his or her family. To this end the employer must furnish a bank guarantee. Legislation in *Pakistan*[28] specifies that in cases where a recruited worker is not hired because he or she is unfit to undertake the employment, the recruiter is bound to bear the return travel expenses; a provision which seems to be reflected in many other countries, such as *Antigua and Barbuda*,[29] *Dominica*,[30] and *Jamaica*.[31] Finally, *Zambia* reported that the costs of repatriation are covered by the employer in all cases.

---

[25] ss. 31-32 of the Immigration Act (Ch. 172), 1968. See s. 29(2)(e) (Ch. 179), of the Laws of the Bahamas for similar provisions.

[26] s. 6 of the Immigration Act, 1952.

[27] s. 17(1) of the Aliens and Immigration Act (Ch. 105), 1972.

C. Redress in case of issuance of an expulsion order

614. Migrant workers should be guaranteed, by virtue of a number of provisions in Recommendation No. 151, the right to legal redress should they lodge an appeal either claiming violation of benefits and compensation as specified in Paragraph 34(2), or against the issuance of an expulsion order, as specified in Paragraph 33. Paragraph 33 further specifies that migrants contesting an expulsion order should be permitted to reside in the country for the duration of the case — "subject to the duly substantiated requirements of national security or public order" — should have equal access with national workers to legal assistance, and should have access to an interpreter. Equal rights of redress between regular entry migrants and national workers have been dealt with in more detail in paragraph 447 above.

615. Few reports included information on these provisions. Some of the reports received indicate no difficulties in applying these provisions, such as *Qatar* which reports that according to section 8 of its Labour Code, "all suits filed by workers or their successors in accordance with its provisions shall be examined immediately and shall be exempt from legal fees", and *New Zealand*, which reports that an independent appeals procedure is in place, which "revolves around the humanitarian situation of the migrant". Some problems appear, however, to have arisen in other cases. *Norway* reports that while nationals and non-nationals have the same rights regarding free legal aid, there are "certain limits" in the case of expulsion.[32] The *Czech Republic* indicated that "in proceedings before a Czech court, foreigners have the right to exemption from court fees and deposits and the appointment of a representative to protect their rights free of charge if reciprocity is guaranteed".[33] Foreigners who are able to present a case are guaranteed the right to address the court in a language of their choice, and the costs of any necessary translation are covered by the State. *Germany* also indicated that translation is only provided on the basis of reciprocity.[34] The Committee points out, once more, that the provisions of Conventions Nos. 97 and 143 and Recommendations Nos. 86 and 151 are not subject to the principle of reciprocity.

---

[28] Emigration Act, 1979.

[29] s. 9 of the Recruiting of Workers Act (Ch. 151), 1941.

[30] s. 7 of the Recruiting of Workers Act, 1961.

[31] Recruiting of Workers Act, 1991.

616. The Committee notes with concern reports, including that of *Germany*,[35] which indicate that an objection or action against the refusal of the granting or renewal of a residence permit does not postpone its effect, effectively implying that migrants may be removed from the country on the basis of an expulsion order which may turn out to be unjustified. The unintended effect of such policies may be to dissuade migrants who may otherwise believe their employment to have been unjustly terminated, from lodging an appeal. The Committee takes account of an opinion submitted by a non-governmental organization which pointed out that, even where a residence permit is prolonged to allow a migrant to pursue a complaint, in some cases this process may take several months or even years, and unless the migrant is also permitted to work during this time, in practice, many migrants may not have the means to complete the procedure or to cover his or her living expenses. At the same time as encouraging States to consider the possibility of permitting migrants to work during the period of their appeal, the Committee notes with interest that in certain countries, such as *Senegal*, legislation contains provisions to the effect that migrant workers have the choice between pursuing a complaint either in the country where the employment took place, or in their country of origin.[36]

617. The Committee also notes with interest initiatives taken by some sending countries to ensure that their nationals have access to appropriate redress mechanisms while employed abroad. For example, the *Philippines* only seeks to deploy Filipinos to countries where, inter alia, existing labour laws protect the rights of migrant workers. The establishment of a Legal Assistant for Migrant Workers in the Department of Foreign Affairs and the Legal Assistance Fund, are further means the Government has taken to ensure the protection of nationals abroad.[37]

---

[32] See s. 42 of the Immigration Act (amended) (Jan. 1998).

[33] According to s. 50 of Act No. 97/1963 on International Private and Procedural Law.

[34] s. 14(4) of the Labour Courts Act (2 July 1979).

[35] s. 72 of the Act of 16 Dec. 1983.

[36] This depends, of course, upon the conclusion of a judicial agreement to this effect between the countries concerned.

D. Employment and benefits upon return to the home country

618. Paragraph 20 of Recommendation No. 86 states that "when migrants for employment or members of their families who have retained the nationality of their State of origin return there, that country should admit such persons to the benefit of any measures in force for the granting of poor relief and unemployment relief, and for promoting the re-employment of the unemployed, by exempting them from the obligation to comply with any conditions as to previous residence or employment in the country or place".

619. Very few governments provided information on this provision. *Croatia* reports that social security benefits to returning nationals are given on the basis of bilateral agreements, but that in the absence of such agreements "such insurance rights can be exercised under the provision of the Employment Act only if he/she was paying payroll contributions to the Employment Office for a period of at least nine months over the last 24 months prior to the termination of his or her employment abroad. In that case, the compensation basis is determined by the Minister of Labour and Welfare, subject to an approval by the Minister of Finance". *Croatia* also indicated that it is the responsibility of the Croatian Employment Office to assist returning migrant workers on their employment rights,[38] while *Viet Nam* reported that responsibility for securing the resettlement of returning migrants lies with private recruitment agents. *San Marino* reports that San Marino citizens can be registered on lists for placement with the employment service even when resident abroad. Upon their return they have access to the benefits available with regard to housing, social assistance and health care. The *Syrian Arab Republic* reports that "they [return migrants] benefit from equal treatment with nationals who have not emigrated, as all citizens are equal before the law, and there exists no restriction in terms of residence or employment in Syria". In *Slovenia*, regulations adopted in 1997[39] provide for the acquisition and extent of rights and obligations and payment of contributions to Slovenians returning to the country after a period of time working abroad, as well as to the spouses of such nationals. In *Albania*, nationals are guaranteed recognition for time spent abroad on the condition (a) that they return to *Albania* and (b) regularly pay contributions to the Social Insurance Agency.[40]

---

[37] Migrant Workers and Overseas Filipinos Act of 1995 (No. 8042).

[38] s. 4 of the Employment Act.

[39] Regulations of 27 Feb. 1997 on voluntary insurance in the event of unemployment of insured persons temporarily employed abroad and their spouses (No. 859).

* * *

620. The Committee notes that several problems have been cited in government reports relating to these provisions. On occasion, these have been cited as preventing ratification of the instruments. The major difficulties appear to stem from Article 8 of Convention No. 143, which deals with non-return of migrants in the case of loss of their employment. The difficulties cited in this regard, in many cases in reports from major migrant receiving countries, relate principally to the application of this provision to both permanent and temporary migrants. Ensuring the application of Article 8 of Convention No. 97 also appears to have raised difficulties for a number of States, which indicated that, despite the fact that this provision applies only to migrants for permanent settlement, should migrants become a burden on public funds, regardless of their residency status, they may no longer be permitted to reside in the country.

---

[40] s. 10 of the Act on the Employment of Albanian citizens outside the territory of Albania (No. 7517), 1991.

FINAL REMARKS

Section I. Ratification prospects, obstacles to ratification and legal difficulties in the application of the instruments

A. State of ratifications and ratification prospects

621. Having reached the end of this survey, and before presenting its conclusions, the Committee recalls that one of the reasons why the Governing Body requested it to carry out this survey was the possible need for revision of the instruments in view of the small number of ratifications of Conventions Nos. 97 and 143 in recent years. The extent to which the member States of the ILO have accepted the obligations laid down in these instruments provides a good starting point for examining the need for revision.

622. Convention No. 97 has garnered 41 ratifications, and Convention No. 143 only 18, making a total of 59 ratifications for both instruments; 12 member States[1] have ratified both instruments. Moreover, the rate of ratifications has slowed down considerably through the years. Since 1980, when the previous General Survey on migrant workers was published, seven new ratifications have been registered for Convention No. 97[2] and ten for Convention No. 143;[3] the most recent ratifications dating back to 1993 (*Bosnia and Herzegovina*). Of the two States[4] that had stated at the time of the first General Survey that they were considering the possibility of ratifying Convention No. 97, only *Venezuela* ratified it (in 1983); and of the six States[5] that were considering the possibility of ratifying

---

[1] *Bosnia and Herzegovina, Burkina Faso, Cameroon, Cyprus, Italy, Kenya, Norway, Portugal, Slovenia, The former Yugoslav Republic of Macedonia, Venezuela* and *Yugoslavia* (referring to the former Socialist Federal Republic of Yugoslavia, since, according to the decisions taken by the Governing Body based on the relevant United Nations resolutions, no State has been recognized as continuing automatically the membership of this State).

[2] *Belize, Bosnia and Herzegovina, Dominica, Saint Lucia, Slovenia, The former Yugoslav Republic of Macedonia* and *Venezuela*.

[3] *Benin, Bosnia and Herzegovina, Italy, San Marino, Slovenia, Sweden, The former Yugoslav Republic of Macedonia, Togo, Venezuela* and *Yugoslavia* (referring to the former Socialist Federal Republic of Yugoslavia, since, according to the decisions taken by the Governing Body based on the relevant United Nations resolutions, no State has been recognized as continuing automatically the membership of this State).

[4] *Argentina* and *Venezuela*.

[5] *Finland, Italy, Norway, Spain, Sweden* and *Tunisia*.

Convention No. 143, only *Italy* (in 1981) and *Sweden* (in 1982) have ratified it to date.

1. Cases in which ratification is envisaged or being considered

623. A number of governments stated that ratification of one or both of the Conventions was envisaged, without however indicating a time frame.

624. The Government of *Angola* reported that there were no particular difficulties, it was only a question of timeliness. The Government of *Argentina* stated that the General Confederation of Labour and the Population and Human Resources Commission of the Chamber of Deputies considered that ratification of the Conventions was appropriate and necessary. The Government of *Australia* stated that a task force had examined both Conventions in 1993 and considered, in the light of paragraph 493 of the 1980 General Survey, that these two instruments could be ratified. However, the task force recommended that the annexes to Convention No. 97 and Part I of Convention No. 143 be excluded. The Government of *Colombia* pointed out that it had ratified the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and that it intended to examine once again the possibility of ratifying the ILO Conventions. The Government of *Croatia* stated that it had submitted the Conventions to the Economic and Social Committee at the request of certain trade unions. *Guatemala* pointed out that ratification prospects would depend on the results of certain measures that it intended to take both nationally and jointly with neighbouring States to give effect to the provisions of these Conventions in practice. The Government of *India* reported that it has recently confronted an increase in emigration flows, and the question of ratifying the Conventions was currently being studied. The Government of *Lebanon* affirmed that ratification would be envisaged only if there was an increase in the number of migrant workers. The Governments of *Lithuania, Peru, Poland* and *Yemen* reported that ratification of the Conventions was being considered. The Government of *Sweden* is again investigating the possibility of ratifying Convention No. 97 in the light of changes that have occurred in its legislation. The Government of the *Syrian Arab Republic* stated that it had begun to take concrete steps to ratify these Conventions. Lastly, the Government of *Viet Nam* stated that ratification of both Conventions would be considered in due course.

(a) *Cases in which ratification is envisaged once appropriate legislation has been adopted*

625. The Government of *South Africa* stated that due consideration would be given to ratification of the Conventions once the draft legislation now under discussion had been adopted. The Council of Ministers of *Albania* asked for these two Conventions to be submitted to it, together with suggested amendments to its legislation. The Government of *Saudi Arabia* stated that ratification was contingent on the adoption of provisions to bring its legislation into conformity with the Conventions and that it could not give any indication of the time this would take. *Brazil* pointed out that Act No. 6815 of 19 August 1980 (governing the legal situation of foreigners in *Brazil* and establishing the National Immigration Council) was now before Congress and that a preliminary study was to be made of Convention No. 143 before submitting it to Congress. The Government of *Chile* was not envisaging ratification of the Conventions until a new migration Bill had been approved and until it had ratified the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which had been approved by the Chamber of Deputies and was now before the Senate. The Government of *Finland* stated that it would consider the possibility of ratifying Convention No. 143 once it had adopted the current amendments to its immigration legislation. The Government of *Greece* informed the Committee that the Higher Labour Council on International Labour Conventions had decided that the country would only consider the possibility of ratifying the Conventions once it had adapted its legislation to the new situation the country was facing, i.e. the huge flow of clandestine migrants. Lastly, the Government of *Luxembourg* stated that it would examine the possibility of ratifying Convention No. 143.

(b) Cases in which countries have requested ILO technical assistance

626. The Government of the *Republic of Korea* stated that it planned to seek ILO assistance, as it had for four fundamental ILO Conventions in April 1998, in reviewing its legislation in the light of the Conventions. The Government of *Morocco* considered that technical cooperation programmes would afford it an opportunity to define, with ILO assistance, measures to be taken with regard to legislation and practice to pave the way for ratifying the Conventions. The Government of *Tajikistan* expressed the wish to bring its legislation into conformity with the ILO Conventions and Recommendations under review in this survey, with ILO assistance.

2. Cases in which ratification is not envisaged or not on the agenda

627. Several governments stated that they did not plan to ratify both Conventions: *Austria, Benin, Cape Verde, China, Congo, Cote d'Ivoire, Czech Republic, Estonia, Ethiopia, Indonesia, Japan, Jordan, Kuwait, Mali, Mexico, Nepal, Oman, Pakistan, Panama, Papua New Guinea, Singapore, Sri Lanka, Switzerland, Suriname, Tunisia, Turkey, United Arab Emirates, United Kingdom (Bermuda, British Virgin Islands, Falkland Islands (Malvinas), St. Helena), United States;* or the one that they had not yet ratified: *Belgium, Cuba, Ecuador, Germany, Mauritius, New Zealand, Spain, United Kingdom;* or one of the Conventions: *Finland* and *Luxembourg* (No. 97). The reasons cited by these governments will be elaborated upon in paragraphs 629-643 below.

628. The Governments of *Bahrain* and *Barbados* stated that they did not consider it appropriate to ratify these instruments. *Ghana* pointed out that the question of ratification of these Conventions had not been brought up by the social partners.

B. Obstacles to ratification

1. Issues relating to both Conventions Nos. 97 and 143

629. Some governments informed the Committee that their legislation on international migration was either non-existent, as in *Cape Verde*, or since they had never been faced with international migration on a large scale, at an embryonic stage, as in *Azerbaijan, Belarus, China, Czech Republic, Romania* and *Tajikistan*. Of these, some stated that they were in the process of drafting appropriate legislation. The Government of *South Africa* pointed out that its legislation on international migration for the most part dates back to the apartheid era and that it was in the process of drafting new legislation which would take account of the provisions of the instruments examined in this survey.

630. The *United States* invoked the complexity of its immigration legislation and practice as well as the fact that their legislation on this subject is constantly evolving: thus, for example, the Act on immigration and nationality has been amended each year since 1990 and a proposal for amendment has recently been submitted to Congress.

631. The Governments of *Bulgaria, Central African Republic, Congo, Ethiopia, Guatemala, Mauritius, Papua New Guinea* and *Romania* referred to their difficult economic situation and notably their high unemployment rates, in particular explaining that this situation prompted them to give preference to nationals over foreign labour.

632. The Governments of *Guatemala, Lebanon, Mali* and the *United Arab Emirates* mentioned the financial cost of implementing the instruments. Some of these countries referred to the increased workload which ratification would entail for their labour administrations, which were not sufficiently developed or lacked the resources to cope with it. Lastly, the *Czech Republic* cited the lack of the necessary infrastructure to apply the Conventions.

633. The Government of *Argentina* expressed certain misgivings as to the conformity of its legislation with all the provisions of the Conventions. *Japan* indicated that it would need to examine its legislation and practice to study their conformity with the provisions of Conventions Nos. 97 and 143. The following governments stated that their legislation was not in conformity with the provisions of the instruments under review: *Cape Verde, China, Egypt, Ethiopia, Finland, Greece, Indonesia, Kuwait, Lebanon, Luxembourg, Panama, Saudi Arabia, Slovakia, Sri Lanka, Switzerland, Syrian Arab Republic, Tajikistan, Tunisia, United Arab Emirates, United Kingdom* and *Viet Nam*.

634. Some governments cited the specificity of their labour market as an obstacle to ratification: the Government of *Barbados* explained that being an island, the country did not have borders with neighbouring countries and that there were a limited number of migrant workers in its territory.[6] The Governments of *Bahrain* and *Luxembourg* explained that a large proportion of their countries' labour was foreign (one-third and 55 per cent, respectively). The Government of *Jordan* referred to the specificity of its labour market, but did not state explicitly what it meant by this term. Lastly, the Government of *Nepal* pointed out that many of its own workers migrated abroad, while it had to import a huge number of professionals and skilled workers from abroad.

635. Some governments felt that ratification would not be appropriate, whether because they received few if any migrant workers (*Cuba, Suriname*); or because they considered, as did the Governments of *Ethiopia, Mexico* and *Pakistan*, that these instruments are primarily concerned with countries that have manpower shortages and need foreign labour, i.e. the countries of employment, and not the countries of origin of migrant workers; or because they did not agree with the approach adopted by the ILO. The Government of *Singapore*, for example, pointed out that the government intervention required by these instruments might not necessarily be the best approach, given the varied economic, social and political conditions prevailing in member States.

636. Some governments referred to institutional obstacles; for example, the Government of *Tajikistan* explained that the delay in bringing its legislation into conformity with the provisions of Conventions Nos. 97 and 143 and their ratification was to a large extent due to the economic instability the country was now experiencing. The Government of *Switzerland* pointed out that its reservations with regard to entering into multilateral commitments in the area of policy on foreigners were essentially dictated by the imperatives of direct democracy.

637. Finally, the Government of *Oman* explained that, only having become a Member of the ILO in 1994, it had not yet had the opportunity to examine in detail all the Conventions adopted by the Organization prior to that date, including those relating to migrant workers.

2. *Issues relating to Convention No. 97*

638. Some of the obstacles mentioned concern the 1949 instruments in particular. The Governments of *Australia* and *Poland* stated that if they ratified Convention No. 97 they would exclude Annexes I and II (Australia) and Annex I (Poland) because they felt they were inappropriate given the characteristics of international migration in their respective countries. The Government of *Finland* stated that Convention No. 97 was outdated in many respects, while the Governments of *Luxembourg* and *San Marino* considered that the annexes to the Convention were too detailed and hence impossible to apply. Finally, the

---

[6] In this connection, the Committee notes that, in its comments appended to the Government's report, the Barbados Workers' Union states that there has been a recent increase in migrant labour, particularly in construction, and that the Government should ratify these Conventions, thereby offering protection to these workers.

Government of *India* invoked the problem of services provided to potential emigrants which in India are fee charging, contrary to Article 2 of the Convention.

3. Issues relating to Convention No. 143

639. The Government of *Australia* stated that, as migration in abusive conditions did not occur in this country, there were several areas dealt with in Part I (migrations in abusive conditions) of Convention No. 143 in which there was little relevant legislation. The Government of *Spain* pointed out that ratification of Convention No. 143 would require the establishment of costly infrastructures to combat illegal immigration effectively and that it preferred to channel these resources into the integration of immigrants in a regular situation. The Government of *India* perceived Part I of the Convention, which focuses, according to the Government, on the detection of abusive migrations and the existence of migrants illegally employed in its territory, as inappropriate to cover all migrant workers. The Government of *Luxembourg* mentioned the absence of specific legislation to combat migration in abusive conditions as one of the obstacles to ratification of Convention No. 143, or at least of Part I. The Government of *Mexico* stated that the obstacles to ratification lie in the difficulties the Mexican authorities face in systematically seeking to determine the extent of migration flows at its northern border as well as problems generated by the flow and trafficking of migrant workers entering *Mexico* illegally from the south. Another problem, according to the Government, is the absence of provisions protecting migrant workers in an irregular situation, which it considers as a serious omission which does not take into account the situation of emigration countries, such as *Mexico*. The Government of the *Netherlands* stated that although it had agreed with the objectives of Part I of Convention No. 143 (to combat international migration in abusive conditions in general and the illegal employment of foreign workers), the text of the Convention did not meet these aims in such a way as to permit it to ratify the Convention. The Government of the *United Kingdom* recalled that although in 1975 it had supported the underlying principles of Convention No. 143 and Recommendation No. 151, it had expressed certain reservations concerning some of their provisions, and that it still retained these reservations.

640. In the Committee's opinion, certain difficulties cited in paragraphs 629-639 above ought not to constitute fundamental obstacles to the ratification of Conventions Nos. 97 and/or 143. The Committee reminds governments therefore that the Office is at their disposition to furnish them, should they so wish, with technical consultation services in the field of international migration in order to, inter alia, assist them in overcoming the aforementioned difficulties.

C. Legal difficulties in the application of the instruments

641. Throughout this survey, the Committee has described the various problems and difficulties in the application of the instruments mentioned by governments in their reports. Where necessary or at the request of governments the Committee has endeavoured to clarify the scope or meaning of certain provisions of these instruments. The Committee sees this as part of its role of evaluating the application of international labour standards, as well as a way of helping governments to assess the extent to which their legislation and practice are compatible with the provisions in question and of finding means of overcoming these difficulties of application.

642. The Committee has drawn up a list of the provisions mentioned by governments in their reports as giving rise to difficulties and observes that nearly all of the provisions of the Conventions, annexes and Recommendations have been cited.[7] As these difficulties have already been reviewed in the relevant chapters of this survey, the Committee will merely recall here the provisions which appear to give rise to the most problems for member States.

643. In the case of Convention No. 97, the provisions most frequently cited by governments as a source of difficulties are Articles 6 (on equality of treatment between foreign workers and national workers) and 8 (maintenance of residence rights in the event of incapacity for work). In the case of Convention No. 143, Articles 8 (protection in the event of loss of employment), 10 (equality of opportunity and treatment) and 14(a) (right of migrant workers to geographical and occupational mobility) created the most difficulties for governments. These are discussed in further detail in the relevant chapters.

Section II. Conclusions

A. International labour Conventions and national legislation on migrant workers: Convergence and divergence[8]

644. The Committee would like to emphasize first of all that while it welcomes the number of reports received, it regrets nonetheless that many of them merely summarized the legislation in force on the subject of emigration and/or immigration and that very few governments or employers' or workers' organizations supplied information on the application in practice of the different provisions of the instruments under review in this General Survey.[9] A number of uncertainties therefore remain as to the manner in which States put into practice the provisions of the instruments.

---

[7] Convention No. 97: Arts. 2, 3(1), 4, 5(a), 6(1)(a), 6(1)(b), 6(1)(c), 6(1)(d), 7(2), 8(1), 10; Annex I: Arts. 4, 5(1), 6, 7(1); Annex II: Arts. 3(5), 5, 7, 9, 10, 11; Recommendation No. 86: Paras. 5(2), 10(a), 14(3), 15(1), 15(2), 16(1), 17, 18(1), 21(1); Convention No. 143: Arts. 2(1), 3(a), 4, 5, 6(1), 7, 8(1), 8(2), 9(1), 9(3), 9(4), 10, 11(1), 11(2), 12(a), 12(d), 12(g), 13(1), 13(2), 14(a), 14(b), 15; Recommendation No. 151: Paras. 2(f), 8(3), 13(1), 15, 18, 30, 31, 34(1)(b), 34(1)(c)(i).

[8] This title is taken from a report prepared by the Office under the Interdepartmental Project on Migrant Workers, 1994-95 (Picard, op. cit., pp. 38-43).

[9] For example: court decisions having a bearing on the application of Conventions Nos. 97 and 143, observations of employers' and workers' organizations, activity reports of national

645. Having reached the end of its review of the legislation, if not the practice, of member States, the Committee is nonetheless in a position to set out the points of convergence and divergence between national laws and regulations and international labour standards concerning migrant workers; it should of course be understood that, for those countries which have not ratified them, these standards create no obligations other than those laid down in article 19 of the ILO Constitution.

646. On the whole the ILO instruments seem to have fulfilled their role in orienting national laws and regulations in certain areas, including the organization of migration flows,[10] although the mechanisms for disseminating information between countries and to potential users could be strengthened to enable it to be disseminated as widely and as fully as possible; and the nature of the information that must be disseminated should perhaps be specified. In this respect, under Article 1 of Convention No. 97, the ILO also has a role to play in collecting and disseminating information on policies and legislation, movements of migrant workers and their living and working conditions, as well as on bilateral and multilateral migration agreements — a role it already plays but which could benefit from being strengthened.

647. Generally speaking, countries tend to follow the provisions made by the instruments in broad terms, but less so when it comes to provisions calling for more specific commitments, in particular with regard to the protection of migrant workers. The points of divergence lie in key areas of the instruments: recruitment of migrant workers, rights afforded to migrant workers in an irregular situation, and the policy of promoting equality of opportunity and treatment.

1. Recruitment procedures

648. The 1949 instruments saw the role of private recruitment agencies as secondary to that which was expected of the public authorities. The global context has changed, however, and there has now been a movement in the other direction in some regions, where the international mobility of workers is increasingly in the hands of private fee-charging recruitment agencies. "In some large labour-supplying countries they now comprise a major service industry, accounting for the recruitment and placement of 60 to 80 per cent of all temporary labour migrants leaving every year, and earn substantial revenues from the business."[11] Except where bilateral agreements on migration have been concluded between sending and receiving countries, the public services today have a minor and

---

authorities responsible for enforcing national legislation and labour inspections, and statistics on the application of the Conventions.

[10] As was seen above, government-sponsored arrangements for group transfer today have taken on a limited role.

[11] *Protecting the most vulnerable of today's workers*, op. cit., para. 102.

shrinking role in the recruitment and placement of migrant workers. Private employment agencies have proven very quick to spot shortages of certain categories of labour on the labour market, find workers to fill the gap and propose flexible solutions that are appropriate given the growing complexity of economies, even managing to overcome the information gaps and institutional barriers that isolate national labour markets from one another. The commercialization of placement has negative aspects, however: (a) advertising, distributing various forms of misleading propaganda, soliciting applications and demanding exorbitant fees (well above the maximum allowed by regulations or the actual cost of recruitment) for non-existent job offers; (b) withholding information or giving false information on the nature of jobs and conditions of employment; and (c) selecting applicants not on the basis of job qualifications but according to the amount they are willing to pay to get the job. Unskilled workers without any particular technical qualifications are particularly vulnerable to malpractices by certain private placement agents organizing international labour migration. Many countries have therefore regulated the activity of private agencies recruiting migrant workers much more closely than other commercial business and have imposed stiff sanctions against certain offences, while others prefer to rely on self-regulation of the industry, thus substantially reducing the administrative workload of investigating and monitoring the agencies. That fraud and malpractices still persist in this area shows how difficult it is to rely on regulation as a means of mitigating the impact of market forces on migratory processes; more importantly, it raises the question of the consequences of the growth of private recruitment agencies to the detriment of public services.

649. The ILO recognized the need for States to ensure that the benefits of private employment agencies do not encroach upon or diminish the rights of workers in the adoption in June 1997 by the International Labour Conference of the Private Employment Agencies Convention (No. 181), which revised the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96). Article 8 of Convention No. 181 provides for the protection of migrant workers recruited or placed by private employment agencies. Article 7 reaffirms the principle that "private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers" but allows exceptions in respect of certain categories of workers and specified types of services provided by private employment agencies. It should equally be recalled that in 1996, that is one year earlier, the International Labour Conference adopted the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), which states in Article 4 that States must "ensure that no fees or other charges for recruitment or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer" but specifies that "costs of the national statutory medical examination, certificates, a personal travel document and the national seafarer's book shall not be deemed to be 'fees or other charges for recruitment'". In this connection, the Committee considers that a clearer distinction than that made in the 1949 instruments should be drawn between the free services which should be provided to all would-be migrants and any payment for recruitment and placement services which result in the migrant effectively performing a job that corresponds to the offer made.

2. Rights afforded to migrant workers in an irregular situation

650. The analysis of national law and practice reveals a degree of discrepancy between certain principles laid down in basic texts or ratified Conventions and the measures actually taken and applied to control migration flows with the aim of reducing or even stopping them altogether. Moreover, the protection of fundamental rights of migrant workers in an irregular situation is illusory if there is no precise definition of the basic human rights of all migrant workers as provided by Convention No. 143, and if difficulties bar their access to appeal procedures.[12] The lack of a precise definition of fundamental human rights of *all* migrant workers (notably those in an irregular situation) which member States must respect — in terms of Article 1 of Convention No. 143 — represents an important obstacle inasmuch as many countries are concerned that the rights thus recognized for irregular migrants could be widely interpreted by the Committee. Concerning the refusal of many countries to recognize the right of migrant workers in an irregular situation to entitlements arising out of past employment as regards remuneration, but especially as regards social security, it should once again be emphasized that the enjoyment of these rights, linked to having actually undertaken a job, does not forbid the State concerned from proceeding to deport an irregular worker and that the equality of treatment prescribed in the Convention is to be interpreted as requiring that these workers enjoy equality of treatment not with nationals, but with migrants who are lawfully within the national territory and legally employed.

3. Ensuring equality of opportunity and treatment

651. Although the need to ensure equality of *treatment* between migrant workers and national workers as regards conditions of work, social security and access to social services does not raise any difficulties in principle, the same cannot be said for the promotion of equality of *opportunity* and treatment in the areas covered by Convention No. 143 and Recommendation No. 151 (employment and occupation, social security, trade union rights, individual and collective freedoms) for the migrant worker as well as members of his or her family. The provisions of these instruments offer a higher degree of protection than that afforded by national legislation. Except in countries of long-term immigration where their status tends to converge and eventually merge with that of citizens, a migrant is and remains a foreigner. It is clear from government reports that in countries that have a policy of accepting migrants for a fixed period of time and for a specific purpose, promotion of equality of opportunity and treatment is not usually envisaged: a migrant worker taken on for his or her ability to carry out a specified job will leave again at the end of the contract or renew it for a further fixed period, without there being any question of equality of opportunity in the context of free choice of employment, which is the prerequisite for such equality. In countries where migration flows are long established and have led to permanent settlement of migrants, promotion of equality of opportunity and treatment comes into play as a means of facilitating the integration or assimilation of migrants.

---

[12] For irregular migrant workers, apart from the difficulties inherent in being a foreigner (language barrier, ignorance of procedures, etc.), a migrant's irregular situation often constitutes a major obstacle deterring him or her from appealing to the judicial authorities, for fear of bringing his or her situation to the attention of the authorities, with the ensuing risk of expulsion.

652. Another aspect of equality of opportunity and treatment — and one that had not arisen when the present standards were adopted — is the impact of regional groupings (the European Union, MERCOSUR and others) on this question. The Committee considers that the fact that the countries concerned often provide better treatment to workers from other countries in the regional grouping, than to workers from outside the grouping, raises difficult questions of principle which need to be addressed.

4. *Control of migration*

653. The Committee noted in Chapter 4 that the methods by which States carry out their obligation, under Article 3 of Convention No. 143, to "suppress clandestine movements of migrants for employment and illegal employment of migrants", is not covered by the Convention. It notes in practice that the measures taken may in some circumstances constitute violations of the fundamental human rights of workers. This question should be considered in the framework of a Conference discussion on migration for employment.

5. *Sanctions*

654. The Committee regrets the lack of information provided on the *practical* application of sanctions.[13] This is of concern because such information as indicated in the reports suggests that, in practice, sanctions are taken against irregular-status migrant workers themselves, although Convention No. 143 does not address this issue. The absence of information about the sanctions required of governments pursuant to Article 6 of Convention No. 143 in respect of the illegal employment of migrant workers, the organization of movements of migrants for employment involving abusive conditions, and the knowing assistance to such movements whether for profit or otherwise, would suggest that this Article is not properly applied in practice. The Committee would urge governments to reconsider this problem in light of their obligations.

---

[13] See paras. 354-359.

B. What standards for migration?

655. The Committee recalls[14] that Conventions Nos. 97 and 143, which are the subject of this General Survey, are among those for which the Governing Body requested additional information from constituents to enable it to clarify the possible need for revision of these instruments and that it accordingly decided "to request the Committee of Experts to undertake a General Survey". In this regard, the Committee remarks that the questionnaire sent to member States, in accordance with article 19, did not directly pose the question of the appropriateness (or not) of revising Conventions Nos. 97 and 143. This survey was on opportunity for the Committee to examine all the reports submitted by States which have ratified one and/or both Conventions Nos. 97 and 143, under article 22 of the ILO Constitution, with a view to possible normative action. Through this examination it has clearly been seen that the ratified instruments are not fully applied and, above all, a number of difficulties of application reveal misunderstandings of the obligations enunciated by certain provisions of the Conventions.

656. Throughout this survey, it has been remarked that the context in which the international labour standards examined in this survey were adopted is different from that in which migration flows occur today, as can be seen from the following examples.

1. Declining role of state leadership in the world of work

657. The ILO instruments were drafted with state-organized migration in mind, rather than spontaneous migration. For both economic and political reasons, the State no longer plays such a dominant role as it did over 45 years ago in the movement of workers across borders. Faced with the increasing diversity and complexity of international migration compared to previous decades, many countries of emigration are unable to provide efficient employment services free of charge, with the result that private recruitment and placement agencies for migrant workers have moved from a secondary role after the public services to an essential one. This trend has also affected a number of major countries of employment, in particular in Western Europe, which, after hesitating to abandon the monopoly of public employment services in the recruitment and placement of foreign labour, are now giving serious consideration to the advantages offered by the incontestable flexibility and mobility of private agents.

2. Feminization of migration for employment

658. When Conventions Nos. 97 and 143 were adopted, female migrants were mostly to be found in the context of family reunification. Times have changed, and today more and more women migrate not to join their partner, but in search of employment in places where they will be better paid than in their home country. It is estimated that female migrants make up almost half of migrant workers in the world today.[15] This "feminization" is sometimes characterized by an over-representation of women migrants in extremely vulnerable positions, in so far as these positions are characterized by a strong bond of subordination between the employer and the employee and, above all, because those sectors are generally excluded from the scope of legal protection on employment, notably from the Labour Code. It can be asked whether new measures ought to be taken by the ILO to ensure protection for this category of workers and, equally, if any revision of the treatment of artistes and members of the liberal professions in the ILO instruments is necessary, particularly in light of the extent of the phenomenon of women migrant workers being recruited for such employment only to find themselves working in the sex sector.

---

[14] See paras. 1-2 of this survey.

3. Increase in temporary migration in place of migration for permanent settlement

659. While the 1949 and 1975 instruments were originally conceived with a view to covering migration for settlement (immediate or gradual) today a rise in migration for short-term employment can be clearly seen. In their reports, member States emphasized this change, as well as the repercussions this has for application of the most important provisions of Conventions Nos. 97 and 143. In light of these changes, it can be asked whether it is appropriate to examine the extent to which some provisions of the instruments can be applied only to migrant workers with permanent residence status and to the protection to be given to temporary migrant workers.

4. Increase in illegal migration

660. Since 1975, the date of the adoption of Convention No. 143, which represents the first attempt by the international community to address problems relating to clandestine migration and illegal employment of migrants, which had become particularly acute during the early 1970s, clandestine migration and illegal employment has taken such proportions that countries of immigration — themselves confronted with rising unemployment, poverty and inequality, and finding it necessary to create a balance between the legitimate claims of their nationals who count upon national preference, and the rights of foreigners — have chosen to put the accent upon controlling migration flows.

661. This said, the Committee is conscious that for countries facing economic transition and poverty, environmental degradation and massive unemployment, etc., emigration is often a natural result of the search of their citizens for employment and a better life. Emigration may not be the answer in the search for development, but it is a natural economic phenomenon that will continue as long as the reasons given above persist. The Committee therefore considers it vital that measures to suppress illegal migration be supplemented by the kind of measures contemplated in these instruments, to facilitate migration whenever appropriate, and to protect migrant workers in their quest for a better life. These measures will benefit from the kind of dialogue between countries of emigration and immigration that can be observed when such States become partners in controlling the flow of migration, and learn to adapt their policies to each other's needs.

---

[15] For source see footnote 22 in the Introduction.

5. Growth of certain means of transport

662. Some of the provisions of the instruments are simply out of date: for example, Article 5 of Convention No. 97, which requires migrant workers and the members of their families to undergo two medical examinations, both at the time of departure and on arrival, does not take account of changes in transportation and the increase in air travel.

* * *

663. In addition to the lacunae in Conventions Nos. 97 and 143 due to the evolution of the context in which they were adopted, the process of comparing national legislation with international labour standards relating to migrant workers has made it clear other lacunae exists in these instruments. For example, they do not deal with the elaboration and establishment of a national migration policy, in consultation with employers' and workers' organizations, within the framework of national policy; questions relating to migrant workers' contracts, which are of vital importance in terms of protecting workers, are not addressed in the existing instruments;[16] the same can be said of questions touching upon certain aspects of the payment of migrant workers' wages.[17]

664. Despite these lacunae and the changing nature of the context in which migration takes place since the adoption of Conventions Nos. 97 and 143, the Committee is convinced that the principles enshrined in these instruments are still valid today: control of migratory flows, cooperation between States, protection of migrants for employment and equality between nationals and migrants with regard to conditions of work. It notes however that many member States still hesitate to ratify instruments that touch on what is often seen as a sensitive subject with considerable political, socio-cultural and even economic ramifications.

665. According to predictions, international migration will continue to increase; it is unacceptable for millions of workers to remain excluded from international protection. The fact has to be faced, however, that neither of these Conventions has obtained many ratifications, while the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in 1990, has not managed to achieve the 20 ratifications needed to enter into force. Many countries, including those most affected by international migration,[18] have some difficulty in ratifying very detailed instruments in this area which attempt to regulate every aspect of the migration process and treatment of migrant workers. The Committee has also observed that member States whose legislation and practice are in conformity with the essential provisions of one or both instruments are often unable to ratify it or accept it officially because of comparatively minor divergences between its precise wording and their own legislation, with the result that a large share of migrant workers are denied any international protection.

---

[16] Such as the precise information which should appear in an employment contract or other written document delivered to a migrant worker prior to departure (name of the company or employer, nature of the work, duration of employment, wages, holidays, etc.).

[17] Some aspects of wage protection are dealt with in the Protection of Wages Convention, 1949 (No. 95), whose provisions have been cited before the supervisory bodies of the ILO in cases of expulsion of migrant workers for whom no final settlement of wages had been made (*Iraq, Libyan Arab Jamahiriya, Mauritania*). Nevertheless, other aspects should be examined in order to adapt protection to the migrant worker's situation (payment intervals, means of payment, deductions from wages for payment of services rendered by private placement agencies, appeals, etc.).

666. At this stage in its deliberations, the Committee judges that two options are open to it. The first consists of recommending to the Governing Body to maintain the status quo, as experience appears to have shown that in terms of international migration, States are reluctant to ratify any international instrument, regardless of how loose and flexible they are. It can also be stated that the difficulties in application of Conventions Nos. 97 and 143 mentioned in paragraphs 641-643 would persist even if a new instrument was adopted or if the existing ones were revised, as these difficulties relate to the most important underlying principles of the instruments, namely equality of treatment between nationals and foreigners, maintenance of residency rights in case of incapacity to work, protection in case of redundancy and geographical and occupational mobility. This status quo could equally be accompanied by a vigorous promotion campaign, notably in light of the findings of the present survey, in relation to those provisions which have been judged inapplicable by certain States but which in fact appear to stem from a misunderstanding. A variant on this approach would be to elaborate one or several additional protocols[19] designed to bridge the gaps in the instruments mentioned above.

667. The second option consists of envisaging a revision of Conventions Nos. 97 and 143. Without wishing to anticipate the final decision to be adopted by the Governing Body, the Committee suggests that the instruments be entirely revised in order to bring them up to date and, in so far as is technically possible, to merge them into a single Convention by the elaboration of a new Convention, designed to bridge the gaps in the current instruments. It would be the for

---

[18] If the majority of the provisions of Conventions Nos. 97 and 143 ought to be put in place by countries of employment, it should be noted that in practice, the Conventions have essentially been ratified by countries of emigration. It should also be noted that except for *Malaysia (Sabah)* and *New Zealand*, no Asian country has ratified these instruments. As the Committee has emphasized throughout this survey, it should be recalled that these instruments — contrary to the interpretation given by certain emigration countries — enunciates obligations for both sending and receiving countries.

[19] A protocol is linked to the Convention to which it is annexed, and a State which has not ratified the Convention may not ratify the said protocol.

Governing Body and the International Labour Conference to decide whether a framework Convention[20] or a single instrument treating the situation of migrant workers in more detail would have the better chance of being ratified and applied in such a way as to ensure the greatest level of protection for the greatest number of migrants possible. By emphasizing universally recognized principles, accompanied by provisions which would enable governments and the social partners to work together to achieve objectives which are adapted to national conditions, it may be possible to obtain wide ratification of the instrument and thus to ensure that the vast majority of migrant workers enjoy an adequate level of protection at work.

668. Whatever the means adopted by the ILO, the Committee considers that much more needs to be done at the international level to address the situation of migrant workers. This is a growing phenomenon in a globalizing economy, and is likely to continue to grow as economies integrate — and sometimes as they disintegrate. It is, as has been seen recently in the Asian economic crisis, very susceptible to disruption of all types, and the situation of migrant workers tends to deteriorate in times of economic difficulty. This kind of economic crisis generally leads on the one hand to slowing or halting migration into once-flourishing economies, at the same time as it causes an equal reaction of workers desiring to emigrate to countries where the economy is stronger and can absorb an over-supply of labour.

669. Thus there is an urgent need for better mechanisms at both the national and international levels to address this phenomenon. It is up to the International Labour Organization to provide the international framework for this effort, and up to the ILO in concert with its constituents to put into place the other policies and measures that will lead to a better and happier life for migrant workers.

---

[20] A framework Convention sets objectives and lays down the basic principles to be observed in attaining them. Because its provisions are flexible as to the attainment of its objectives, due account can be taken of the situation prevailing in each country. Under these Conventions, ratifying States undertake to achieve specific objectives which are sometimes difficult to attain through a programme of continuous action. One example of this type of Convention is the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

APPENDIX A

TEXTS OF THE INSTRUMENTS OF 1949

Migration for Employment Convention (Revised), 1949 (No. 97)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals with regard to the revision of the Migration for Employment Convention, 1939, adopted by the Conference at its Twenty-fifth Session, which is included in the eleventh item on the agenda of the session, and

Considering that these proposals must take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Migration for Employment Convention (Revised), 1949:

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to make available on request to the International Labour Office and to other Members —

(a) information on national policies, laws and regulations relating to emigration and immigration;

(b) information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment;

(c) information concerning general agreements and special arrangements on these questions concluded by the Member.

Article 2

Each Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

Article 3

1. Each Member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.

2. For this purpose, it will where appropriate act in co-operation with other Members concerned.

Article 4

Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the departure, journey and reception of migrants for employment.

Article 5

Each Member for which this Convention is in force undertakes to maintain, within its jurisdiction, appropriate medical services responsible for —

(a) ascertaining, where necessary, both at the time of departure and on arrival, that migrants for employment and the members of their families authorised to accompany or join them are in reasonable health;

(b) ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival in the territory of destination.

Article 6

1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

(a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities —

  (i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;

  (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;

  (iii) accommodation;

(b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

  (i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

  (ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension;

(c) employment taxes, dues or contributions payable in respect of the person employed; and

(d) legal proceedings relating to the matters referred to in this Convention.

2. In the case of a federal State the provisions of this Article shall apply in so far as the matters dealt with are regulated by federal law or regulations or are subject to the control of federal administrative authorities. The extent to which and manner in which these provisions shall be applied in respect of matters regulated by the law or regulations of the constituent States, provinces or cantons, or subject to the control of the administrative authorities thereof, shall be determined by each Member. The Member shall indicate in its annual report upon the application of the Convention the extent to which the matters dealt with in this Article are regulated by federal law or regulations or are subject to the control of federal administrative authorities. In respect of matters which are regulated by the law or regulations of the constituent States, provinces or cantons, or are subject to the control of the administrative authorities thereof, the Member shall take the steps provided for in paragraph 7(b) of article 19 of the Constitution of the International Labour Organisation.

Article 7

1. Each Member for which this Convention is in force undertakes that its employment service and other services connected with migration will co-operate in appropriate cases with the corresponding services of other Members.

2. Each Member for which this Convention is in force undertakes to ensure that the services rendered by its public employment service to migrants for employment are rendered free.

Article 8

1. A migrant for employment who has been admitted on a permanent basis and the members of his family who have been authorised to accompany or join him shall not be returned to their territory of origin or the territory from which they emigrated because the migrant is unable to follow his occupation by reason of illness contracted or injury sustained subsequent to entry, unless the person concerned so desires or an international agreement to which the Member is a party so provides.

2. When migrants for employment are admitted on a permanent basis upon arrival in the country of immigration the competent authority of that country may determine that the provisions of paragraph 1 of this Article shall take effect only after a reasonable period which shall in no case exceed five years from the date of admission of such migrants.

Article 9

Each Member for which this Convention is in force undertakes to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire.

Article 10

In cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention.

Article 11

1. For the purpose of this Convention the term "migrant for employment" means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment.

2. This Convention does not apply to —

(a) frontier workers;

(b) short-term entry of members of the liberal professions and artistes; and

(c) seamen.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 14

1. Each Member ratifying this Convention may, by a declaration appended to its ratification, exclude from its ratification any or all of the Annexes to the Convention.

2. Subject to the terms of any such declaration, the provisions of the Annexes shall have the same effect as the provisions of the Convention.

3. Any Member which makes such a declaration may subsequently by a new declaration notify the Director-General that it accepts any or all of the Annexes mentioned in the declaration; as from the date of the registration of such notification by the Director-General the provisions of such Annexes shall be applicable to the Member in question.

4. While a declaration made under paragraph 1 of this Article remains in force in respect of any Annex, the Member may declare its willingness to accept that Annex as having the force of a Recommendation.

Article 15

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of article 35 of the Constitution of the International Labour Organisation shall indicate —

(a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention and any or all of the Annexes shall be applied without modification;

(b) the territories in respect of which it undertakes that the provisions of the Convention and any or all of the Annexes shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention and any or all of the Annexes, are inapplicable and in such cases the grounds on which they are inapplicable; and

(d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 17, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 16

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraphs 4 and 5 of article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of this Convention and any or all of the Annexes will be applied in the territory concerned without modification or subject to modifications; and if the declaration indicates that the provisions of the Convention and any or all of the Annexes will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention or any or all of the Annexes are subject to denunciation in accordance with the provisions of Article 17, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 17

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for

registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

3. At any time at which this Convention is subject to denunciation in accordance with the provisions of the preceding paragraphs any Member which does not so denounce it may communicate to the Director-General a declaration denouncing separately any Annex to the Convention which is in force for that Member.

4. The denunciation of this Convention or of any or all of the Annexes shall not affect the rights granted thereunder to a migrant or to the members of his family if he immigrated while the Convention or the relevant Annex was in force in respect of the territory where the question of the continued validity of these rights arises.

Article 18

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 19

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 20

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 21

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 22

1. The International Labour Conference may, at any session at which the matter is included in its agenda, adopt by a two-thirds majority a revised text of any one or more of the Annexes to this Convention.

2. Each Member for which this Convention is in force shall, within the period of one year, or, in exceptional circumstances, of eighteen months, from the closing of the session of the Conference, submit any such revised text to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

3. Any such revised text shall become effective for each Member for which this Convention is in force on communication by that Member to the Director-General of the International Labour Office of a declaration notifying its acceptance of the revised text.

4. As from the date of the adoption of the revised text of the Annex by the Conference, only the revised text shall be open to acceptance by Members.

Article 23

The English and French versions of the text of this Convention are equally authoritative.

ANNEX I

RECRUITMENT, PLACING AND CONDITIONS OF LABOUR OF MIGRANTS FOR EMPLOYMENT RECRUITED OTHERWISE THAN UNDER GOVERNMENT-SPONSORED ARRANGEMENTS FOR GROUP TRANSFER

Article 1

This Annex applies to migrants for employment who are recruited otherwise than under government-sponsored arrangements for group transfer.

Article 2

For the purpose of this Annex —

(a) the term "recruitment" means —

  (i) the engagement of a person in one territory on behalf of an employer in another territory, or

  (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory,

together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;

(b) the term "introduction" means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of paragraph (a) of this Article; and

(c) the term "placing" means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced within the meaning of paragraph (b) of this Article.

Article 3

1. Each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing as defined in Article 2, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of this Article.

2. Subject to the provisions of the following paragraph, the right to engage in the operations of recruitment, introduction and placing shall be restricted to —

(a) public employment offices or other public bodies of the territory in which the operations take place;

(b) public bodies of a territory other than that in which the operations take place which are authorised to operate in that territory by agreement between the Governments concerned;

(c) any body established in accordance with the terms of an international instrument.

3. In so far as national laws and regulations or a bilateral arrangement permit, the operations of recruitment, introduction and placing may be undertaken by —

(a) the prospective employer or a person in his service acting on his behalf, subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority;

(b) a private agency, if given prior authorisation so to do by the competent authority of the territory where the said operations are to take place, in such cases and under such conditions as may be prescribed by —

  (i) the laws and regulations of that territory, or

  (ii) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.

4. The competent authority of the territory where the operations take place shall supervise the activities of bodies and persons to whom authorisations have been issued in pursuance of paragraph 3(b), other than any body established in accordance with the terms of an international instrument, the position of which shall continue to be governed by the terms of the said instrument or by any agreement made between the body and the competent authority concerned.

5. Nothing in this Article shall be deemed to permit the acceptance of a migrant for employment for admission to the territory of any Member by any person or body other than the competent authority of the territory of immigration.

Article 4

Each Member for which this Annex is in force undertakes to ensure that the services rendered by its public employment service in connection with the recruitment, introduction or placing of migrants for employment are rendered free.

Article 5

1. Each Member for which this Annex is in force which maintains a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment undertakes to require —

(a) that a copy of the contract of employment shall be delivered to the migrant before departure or, if the Governments concerned so agree, in a reception centre on arrival in the territory of immigration;

(b) that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant;

(c) that the migrant shall receive in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration.

2. Where a copy of the contract is to be delivered to the migrant on arrival in the territory of immigration, he shall be informed in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.

3. The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof.

Article 6

The measures taken under Article 4 of the Convention shall, as appropriate, include —

(a) the simplification of administrative formalities;

(b) the provision of interpretation services;

(c) any necessary assistance during an initial period in the settlement of the migrants and members of their families authorised to accompany or join them; and

(d) the safeguarding of the welfare, during the journey and in particular on board ship, of migrants and members of their families authorised to accompany or join them.

Article 7

1. In cases where the number of migrants for employment going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Annex.

2. Where the Members maintain a system of supervision over contracts of employment, such agreements shall indicate the methods by which the contractual obligations of the employers shall be enforced.

Article 8

Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties.

ANNEX II

RECRUITMENT, PLACING AND CONDITIONS OF LABOUR OF MIGRANTS FOR EMPLOYMENT RECRUITED UNDER GOVERNMENT-SPONSORED ARRANGEMENTS FOR GROUP TRANSFER

Article 1

This Annex applies to migrants for employment who are recruited under government-sponsored arrangements for group transfer.

Article 2

For the purpose of this Annex —

(a) the term "recruitment" means —

  (i) the engagement of a person in one territory on behalf of an employer in another territory under a government-sponsored arrangement for group transfer, or

  (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory under a government-sponsored arrangement for group transfer,

together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;

(b) the term "introduction" means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited under a government-sponsored arrangement for group transfer within the meaning of subparagraph (a) of this paragraph; and

(c) the term "placing" means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced under a government-sponsored arrangement for group transfer within the meaning of subparagraph (b) of this paragraph.

Article 3

1. Each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing as defined in Article 2, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of this Article.

2. Subject to the provisions of the following paragraph, the right to engage in the operations of recruitment, introduction and placing shall be restricted to —

(a) public employment offices or other public bodies of the territory in which the operations take place;

(b) public bodies of a territory other than that in which the operations take place which are authorised to operate in that territory by agreement between the Governments concerned;

(c) any body established in accordance with the terms of an international instrument.

3. In so far as national laws and regulations or a bilateral arrangement permit, and subject, if necessary in the interest of the migrant, to the approval and supervision of the

competent authority, the operations of recruitment, introduction and placing may be undertaken by —

(a) the prospective employer or a person in his service acting on his behalf;

(b) private agencies.

4. The right to engage in the operations of recruitment, introduction and placing shall be subject to the prior authorisation of the competent authority of the territory where the said operations are to take place in such cases and under such conditions as may be prescribed by —

(a) the laws and regulations of that territory, or

(b) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.

5. The competent authority of the territory where the operations take place shall, in accordance with any agreements made between the competent authorities concerned, supervise the activities of bodies and persons to whom authorisations have been issued in pursuance of the preceding paragraph, other than any body established in accordance with the terms of an international instrument, the position of which shall continue to be governed by the terms of the said instrument or by any agreement made between the body and the competent authority concerned.

6. Before authorising the introduction of migrants for employment the competent authority of the territory of immigration shall ascertain whether there is not a sufficient number of persons already available capable of doing the work in question.

7. Nothing in this Article shall be deemed to permit the acceptance of a migrant for employment for admission to the territory of any Member by any person or body other than the competent authority of the territory of immigration.

Article 4

1. Each Member for which this Annex is in force undertakes to ensure that the services rendered by its public employment service in connection with the recruitment, introduction or placing of migrants for employment are rendered free.

2. The administrative costs of recruitment, introduction and placing shall not be borne by the migrants.

Article 5

In the case of collective transport of migrants from one country to another necessitating passage in transit through a third country, the competent authority of the territory of transit shall take measures for expediting the passage, to avoid delays and administrative difficulties.

Article 6

1. Each Member for which this Annex is in force which maintains a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment undertakes to require —

(a) that a copy of the contract of employment shall be delivered to the migrant before departure or, if the Governments concerned so agree, in a reception centre on arrival in the territory of immigration;

(b) that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant;

(c) that the migrant shall receive in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration.

2. Where a copy of the contract is to be delivered to the migrant on arrival in the territory of immigration, he shall be informed in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.

3. The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof.

Article 7

1. The measures taken under Article 4 of this Convention shall, as appropriate, include —

(a) the simplification of administrative formalities;

(b) the provision of interpretation services;

(c) any necessary assistance, during an initial period in the settlement of the migrants and members of their families authorised to accompany or join them;

(d) the safeguarding of the welfare, during the journey and in particular on board ship, of migrants and members of their families authorised to accompany or join them; and

(e) permission for the liquidation and transfer of the property of migrants for employment admitted on a permanent basis.

Article 8

Appropriate measures shall be taken by the competent authority to assist migrants for employment, during an initial period, in regard to matters concerning their conditions of employment; where appropriate, such measures may be taken in co-operation with approved voluntary organisations.

Article 9

If a migrant for employment introduced into the territory of a Member in accordance with the provisions of Article 3 of this Annex fails, for a reason for which he is not responsible, to secure the employment for which he has been recruited or other suitable employment, the cost of his return and that of the members of his family who have been authorised to accompany or join him, including administrative fees, transport and maintenance charges to the final destination, and charges for the transport of household belongings, shall not fall upon the migrant.

Article 10

If the competent authority of the territory of immigration considers that the employment for which a migrant for employment was recruited under Article 3 of this Annex has been found to be unsuitable, it shall take appropriate measures to assist him in finding suitable employment which does not prejudice national workers and shall take such steps as will ensure his maintenance pending placing in such employment, or his return to the area of recruitment if the migrant is willing or agreed to such return at the time of his recruitment, or his resettlement elsewhere.

Article 11

If a migrant for employment who is a refugee or a displaced person and who has entered a territory of immigration in accordance with Article 3 of this Annex becomes redundant in any employment in that territory, the competent authority of that territory shall use its best endeavours to enable him to obtain suitable employment which does not prejudice national workers, and shall take such steps as will ensure his maintenance pending placing in suitable employment or his resettlement elsewhere.

Article 12

1. The competent authorities of the territories concerned shall enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Annex.

2. Where the Members maintain a system of supervision over contracts of employment, such agreements shall indicate the methods by which the contractual obligations of the employer shall be enforced.

3. Such agreements shall provide, where appropriate, for co-operation between the competent authority of the territory of emigration or a body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration, in respect of the assistance to be given to migrants concerning their conditions of employment in virtue of the provisions of Article 8.

Article 13

Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties.

ANNEX III

IMPORTATION OF THE PERSONAL EFFECTS, TOOLS AND EQUIPMENT OF MIGRANTS FOR EMPLOYMENT

Article 1

1. Personal effects belonging to recruited migrants for employment and members of their families who have been authorised to accompany or join them shall be exempt from customs duties on arrival in the territory of immigration.

2. Portable hand-tools and portable equipment of the kind normally owned by workers for the carrying out of their particular trades belonging to recruited migrants for employment and members of their families who have been authorised to accompany or

join them shall be exempt from customs duties on arrival in the territory of immigration if such tools and equipment can be shown at the time of importation to be in their actual ownership or possession, to have been in their possession and use for an appreciable time, and to be intended to be used by them in the course of their occupation.

Article 2

1. Personal effects belonging to migrants for employment and members of their families who have been authorised to accompany or join them shall be exempt from customs duties on the return of the said persons to their country of origin if such persons have retained the nationality of that country at the time of their return there.

2. Portable hand-tools and portable equipment of the kind normally owned by workers for the carrying out of their particular trades belonging to migrants for employment and members of their families who have been authorised to accompany or join them shall be exempt from customs duties on return of the said persons to their country of origin if such persons have retained the nationality of that country at the time of their return there and if such tools and equipment can be shown at the time of importation to be in their actual ownership or possession, to have been in their possession and use for an appreciable time, and to be intended to be used by them in the course of their occupation.

Migration for Employment Recommendation (Revised), 1949 (No. 86)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals with regard to the revision of the Migration for Employment Recommendation, 1939, and the Migration for Employment (Co-operation between States) Recommendation, 1939, adopted by the Conference at its Twenty-fifth Session, which are included in the eleventh item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Recommendation, which may be cited as the Migration for Employment Recommendation (Revised), 1949:

The Conference,

Having adopted the Migration for Employment Convention (Revised), 1949, and

Desiring to supplement its provisions by a Recommendation;

Recommends as follows:

I

1. For the purpose of this Recommendation —

(a) the term "migrant for employment" means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment;

(b) the term "recruitment" means —

(i) the engagement of a person in one territory on behalf of an employer in another territory, or

(ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;

(c) the term "introduction" means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of subparagraph (b);

(d) the term "placing" means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced within the meaning of subparagraph (c).

2. For the purpose of this Recommendation, references to the Government or competent authority of a territory of emigration should be interpreted as referring, in the case of migrants who are refugees or displaced persons, to any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government.

3. This Recommendation does not apply to —

(a) frontier workers;

(b) short-term entry of members of the liberal professions and artistes; and

(c) seamen.

II

4. (1) It should be the general policy of Members to develop and utilise all possibilities of employment and for this purpose to facilitate the international distribution of manpower and in particular the movement of manpower from countries which have a surplus of manpower to those countries that have a deficiency.

(2) The measures taken by each Member should have due regard to the manpower situation in the country and the Government should consult the appropriate organisations of employers and workers on all general questions concerning migration for employment.

III

5. (1) The free service provided in each country to assist migrants and their families and in particular to provide them with accurate information should be conducted —

(a) by public authorities; or

(b) by one or more voluntary organisations not conducted with a view to profit, approved for the purpose by the public authorities, and subject to the supervision of the said authorities; or

(c) partly by the public authorities and partly by one or more voluntary organisations fulfilling the conditions stated in subparagraph (b) of this Paragraph.

(2) The service should advise migrants and their families, in their languages or dialects or at least in a language which they can understand, on matters relating to

emigration, immigration, employment and living conditions, including health conditions in the place of destination, return to the country of origin or of emigration, and generally speaking any other question which may be of interest to them in their capacity as migrants.

(3) The service should provide facilities for migrants and their families with regard to the fulfilment of administrative formalities and other steps to be taken in connection with the return of the migrants to the country of origin or of emigration, should the case arise.

(4) With a view to facilitating the adaptation of migrants, preparatory courses should, where necessary, be organised to inform the migrants of the general conditions and the methods of work prevailing in the country of immigration, and to instruct them in the language of that country. The countries of emigration and immigration should mutually agree to organise such courses.

6. On request, information should be made available by Members to the International Labour Office and to other Members concerning their emigration laws and regulations, including administrative provisions relating to restrictions on emigration and facilities granted to emigrants, and appropriate details concerning the categories of persons wishing to emigrate.

7. On request, information should be made available by Members to the International Labour Office and to other Members concerning their immigration laws and regulations, including administrative provisions, entry permits where needed, number and occupational qualifications of immigrants desired, laws and regulations affecting admission of migrants to employment, and any special facilities granted to migrants and measures to facilitate their adaptation to the economic and social organisation of the country of immigration.

8. There should, as far as possible, be a reasonable interval between the publication and the coming into force of any measure altering the conditions on which emigration or immigration or the employment of migrants is permitted in order that these conditions may be notified in good time to persons who are preparing to emigrate.

9. Provision should be made for adequate publicity to be given at appropriate stages to the principal measures referred to in the preceding Paragraph, such publicity to be in the languages most commonly known to the migrants.

10. Migration should be facilitated by such measures as may be appropriate —

(a) to ensure that migrants for employment are provided in case of necessity with adequate accommodation, food and clothing on arrival in the country of immigration;

(b) to ensure, where necessary, vocational training so as to enable the migrants for employment to acquire the qualifications required in the country of immigration;

(c) to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of migrants for employment as the migrants may desire;

(d) to arrange, in the case of permanent migration, for the transfer, where desired, to the country of immigration, of the capital of migrants for employment, within the limits allowed by national laws and regulations concerning export and import of currency;

(e) to provide access to schools for migrants and members of their families.

11. Migrants and the members of their families should be assisted in obtaining access to recreation and welfare facilities, and steps should be taken where necessary to

ensure that special facilities are made available during the initial period of settlement in the country of immigration.

12. In the case of migrants under government-sponsored arrangements for group transfer, medical assistance should be extended to such migrants in the same manner as provided for nationals.

IV

13. (1) Where necessary in the interest of the migrant, Members should require that any intermediary who undertakes the recruitment, introduction or placing of migrants for employment on behalf of an employer must obtain a written warrant from the employer, or some other document proving that he is acting on the employer's behalf.

(2) This document should be drawn up in, or translated into, the official language of the country of emigration and should set forth all necessary particulars concerning the employer, concerning the nature and scope of the recruitment, introduction or placing which the intermediary is to undertake, and concerning the employment offered, including the remuneration.

14. (1) The technical selection of migrants for employment should be carried out in such a way as to restrict migration as little as possible while ensuring that the migrants are qualified to perform the required work.

(2) Responsibility for such selection should be entrusted —

(a) to official bodies; or

(b) where appropriate, to private bodies of the territory of immigration duly authorised and, where necessary in the interest of the migrant, supervised by the competent authority of the territory of emigration.

(3) The right to engage in selection should be subject to the prior authorisation of the competent authority of the territory where the said operation takes place, in such cases under such conditions as may be prescribed by the laws and regulations of that territory, or by agreement between the Government of the territory of emigration and the Government of the territory of immigration.

(4) As far as possible, intending migrants for employment should, before their departure from the territory of emigration, be examined for purposes of occupational and medical selection by a representative of the competent authority of the territory of immigration.

(5) If recruitment takes place on a sufficiently large scale there should be arrangements for close liaison and consultation between the competent authorities of the territories of emigration and immigration concerned.

(6) The operations referred to in the preceding subparagraphs of this Paragraph should be carried out as near as possible to the place where the intending migrant is recruited.

15. (1) Provision should be made by agreement for authorisation to be granted for a migrant for employment introduced on a permanent basis to be accompanied or joined by the members of his family.

(2) The movement of the members of the family of such a migrant authorised to accompany or join him should be specially facilitated by both the country of emigration and the country of immigration.

(3) For the purposes of this Paragraph, the members of the family of a migrant for employment should include his wife and minor children; favourable consideration should be given to requests for the inclusion of other members of the family dependent upon the migrant.

V

16. (1) Migrants for employment authorised to reside in a territory and the members of their families authorised to accompany or join them should as far as possible be admitted to employment in the same conditions as nationals.

(2) In countries in which the employment of migrants is subject to restrictions, these restrictions should as far as possible —

(a) cease to be applied to migrants who have regularly resided in the country for a period, the length of which should not, as a rule, exceed five years; and

(b) cease to be applied to the wife and children of an age to work who have been authorised to accompany or join the migrant, at the same time as they cease to be applied to the migrant.

17. In countries where the number of migrants for employment is sufficiently large, the conditions of employment of such workers should be specially supervised, such supervision being undertaken according to circumstances either by a special inspection service or by labour inspectors or other officials specialising in this work.

VI

18. (1) When a migrant for employment has been regularly admitted to the territory of a Member, the said Member should, as far as possible, refrain from removing such person or the members of his family from its territory on account of his lack of means or the state of the employment market, unless an agreement to this effect has been concluded between the competent authorities of the emigration and immigration territories concerned.

(2) Any such agreement should provide —

(a) that the length of time the said migrant has been in the territory of immigration shall be taken into account and that in principle no migrant shall be removed who has been there for more than five years;

(b) that the migrant must have exhausted his rights to unemployment insurance benefit;

(c) that the migrant must have been given reasonable notice so as to give him time, more particularly to dispose of his property;

(d) that suitable arrangements shall have been made for his transport and that of the members of his family;

(e) that the necessary arrangements shall have been made to ensure that he and the members of his family are treated in a humane manner; and

(f) that the costs of the return of the migrant and the members of his family and of the transport of their household belongings to their final destination shall not fall on him.

19. Appropriate steps should be taken by the authorities of the territories concerned to consult the employers' and workers' organisations concerning the operations of recruitment, introduction and placing of migrants for employment.

VII

20. When migrants for employment or members of their families who have retained the nationality of their State of origin return there, that country should admit such persons to the benefit of any measures in force for the granting of poor relief and unemployment relief, and for promoting the re-employment of the unemployed, by exempting them from the obligation to comply with any condition as to previous residence or employment in the country or place.

VIII

21. (1) Members should in appropriate cases supplement the Migration for Employment Convention (Revised), 1949, and the preceding Paragraphs of the present Recommendation by bilateral agreements, which should specify the methods of applying the principles set forth in the Convention and in the Recommendation.

(2) In concluding such agreements, Members should take into account the provisions of the Model Agreement annexed to the present Recommendation in framing appropriate clauses for the organisation of migration for employment and the regulation of the conditions of transfer and employment of migrants, including refugees and displaced persons.

ANNEX

MODEL AGREEMENT ON TEMPORARY AND PERMANENT MIGRATION FOR EMPLOYMENT, INCLUDING MIGRATION OF REFUGEES AND DISPLACED PERSONS[1]

ARTICLE 1. EXCHANGE OF INFORMATION

1. The competent authority of the territory of immigration shall periodically furnish appropriate information to the competent authority of the territory of emigration [or in the case of refugees and displaced persons, to any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] concerning:

(a) legislative and administrative provisions relating to entry, employment, residence and *settlement* of migrants *and of their families*;

(b) the number, the categories and the occupational qualifications of the migrants desired;

(c) the conditions of life and work for the migrants and, in particular, cost of living and minimum wages according to occupational categories and regions of employment, supplementary allowances, if any, nature of employments available, bonus on engagement, if any, social security systems and medical assistance, provisions concerning transport of migrants and of their tools and belongings, housing conditions and provisions for the supply of food and clothing, measures relating to the transfer of the migrants' savings and other sums due in virtue of this Agreement;

---

[1] The phrases and passages in italics refer primarily to permanent migration; those enclosed within square brackets refer solely to migration of refugees and displaced persons.

(d) special facilities, if any, for migrants;

(e) facilities for general education and vocational training for migrants;

(f) *measures designed to promote rapid adaptation of migrants*;

(g) *procedure and formalities required for naturalisation*.

2. The competent authority of the territory of emigration [or in the case of refugees and displaced persons, any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] shall bring this information to the attention of persons or bodies interested.

3. The competent authority of the territory of emigration [or in the case of refugees and displaced persons, any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] shall periodically furnish appropriate information to the competent authority of the territory of immigration concerning —

(a) legislative and administrative provisions relating to emigration;

(b) the number and occupational qualifications of intending emigrants, *as well as the composition of their families*;

(c) the social security system;

(d) special facilities, if any, for migrants;

(e) *the environment and living conditions to which migrants are accustomed*;

(f) *the provisions in force regarding the export of capital*.

4. The competent authority of the territory of immigration shall bring this information to the attention of persons or bodies interested.

5. The information mentioned in paragraphs 1 to 4 above shall also be transmitted by the respective parties to the International Labour Office.

ARTICLE 2. ACTION AGAINST MISLEADING PROPAGANDA

1. The parties agree, with regard to their respective territories, to take all practical steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration.

2. For this purpose the parties will, where appropriate, act in co-operation with the competent authorities of other countries concerned.

ARTICLE 3. ADMINISTRATIVE FORMALITIES

The parties agree to take measures with a view to accelerating and simplifying the carrying out of administrative formalities relating to departure, travel, entry, residence, *and settlement* of migrants and as far as possible for the members of their families. Such measures shall include the provision of an interpretation service, where necessary.

ARTICLE 4. VALIDITY OF DOCUMENTS

1. The parties shall determine the conditions to be met for purposes of recognition in the territory of immigration of any document issued by the competent authority of the territory of emigration in respect of migrants *and members of their families* [or in the case

of refugees and displaced persons, by any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] concerning —

(a) civil status;

(b) legal status;

(c) occupational qualifications;

(d) general education and vocational training; and

(e) participation in social security systems.

2. The parties shall also determine the application of such recognition.

[3. In the case of refugees and displaced persons, the competent authority of the territory of immigration shall recognise the validity of any travel document issued in lieu of a national passport by the competent authority of the territory of emigration and, in particular, of travel documents issued in accordance with the terms of an international Agreement (e.g. the travel document established by the Agreement of 15 October 1946, and the Nansen passport).]

ARTICLE 5. CONDITIONS AND CRITERIA OF MIGRATION

1. The parties shall jointly determine —

(a) the requirements for migrants *and members of their families*, as to age, physical aptitude and health, as well as the occupational qualifications for the various branches of economic activity and for the various occupational categories;

(b) *the categories of the members of the migrants' families authorised to accompany or to join them.*

2. The parties shall also determine, in accordance with the provisions of Article 28 of this Agreement —

(a) the numbers and occupational categories of migrants to be recruited in the course of a stated period;

(b) the areas of recruitment and the areas of placing and settlement [except that in the case of refugees and displaced persons the determination of the areas of recruitment shall be reserved to any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government].

3. In order to recruit migrants required to meet the technical needs of the territory of immigration and who can adapt themselves easily to the conditions in the territory of immigration, the parties shall determine criteria to govern technical selection of the migrants.

4. In drawing up these criteria, the two parties shall take into consideration —

(a) with respect to medical selection:

  (i) the nature of the medical examination which migrants shall undergo (general medical examination, X-ray examination, laboratory examination, etc.);

  (ii) the drawing up of lists of diseases and physical defects which clearly constitute a disability for employment in certain occupations;

  (iii) minimum health provisions prescribed by international health conventions and relating to movement of population from one country to another;

(b) with respect to vocational selection:
   (i) qualifications required of migrants with respect to each occupation or groups of occupations;
   (ii) enumeration of alternative occupations requiring similar qualifications or capacities on the part of the workers in order to fulfil the needs of specified occupations for which it is difficult to recruit a sufficient number of qualified workers;
   (iii) development of psycho-technical testing;

(c) with respect to selection based on the age of migrants, flexibility to be given to the application of age criteria in order to take into consideration on the one hand the requirements of various occupations and, on the other, the varying capacities of different individuals at a given age.

ARTICLE 6. ORGANISATION OF RECRUITMENT, INTRODUCTION AND PLACING

1. The bodies or persons which engage in the operations of recruitment, introduction and placing of migrants *and of members of their families* shall be named by the competent authorities of the respective territories [or in the case of refugees and displaced persons, by any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government on the one hand and the competent authority of the territory of immigration on the other] subject to the approval of both parties.

2. Subject to the provisions of the following paragraphs, the right to engage in the operations of recruitment, introduction and placing shall be restricted to —

(a) public employment offices or other public bodies of the territory in which the operations take place;

(b) public bodies of a territory other than that in which the operations take place which are authorised to operate in that territory by an agreement between the parties;

(c) any body established in accordance with the terms of an international instrument.

3. In addition, in so far as the national laws and regulations of the parties permit and subject to the approval and supervision of the competent authorities of the parties, the operations of recruitment, introduction and placing may be undertaken by —

(a) the prospective employer or a person in his service acting on his behalf; and

(b) private agencies.

4. The administrative costs of recruitment, introduction and placing shall not be borne by the migrants.

ARTICLE 7. SELECTION TESTING

1. An intending migrant shall undergo an appropriate examination in the territory of emigration; any such examination should inconvenience him as little as possible.

2. With respect to the organisation of the selection of migrants, the parties shall agree on —

(a) recognition and composition of official agencies or private bodies authorised by the competent authority of the territory of immigration to carry out selection operations in the territory of emigration;

(b) organisation of selection examinations, the centres where they are to be carried out, and allocation of expenses resulting from these examinations;

(c) co-operation of the competent authorities of the two parties and in particular of their employment services in organising selection.

ARTICLE 8. INFORMATION AND ASSISTANCE OF MIGRANTS

1. The migrant accepted after medical and occupational examination in the assembly or selection centre shall receive, in a language that he understands, all information he may still require as to the nature of the work for which he has been engaged, the region of employment, the undertaking to which he is assigned, travel arrangements and the conditions of life and work including health and related matters in the country and region to which he is going.

2. On arrival in the country of destination, and at a reception centre if such exists, or at the place of residence, migrants *and the members of their families* shall receive all the documents which they need for their work, their residence *and their settlement* in the country, as well as information, instruction and advice regarding conditions of life and work, and any other assistance that they may need to adapt themselves to the conditions in the country of immigration.

ARTICLE 9. EDUCATION AND VOCATIONAL TRAINING

The parties shall co-ordinate their activities concerning the organisation of educational courses for migrants, which shall include general information on the country of immigration, instruction in the language of that country, and vocational training.

ARTICLE 10. EXCHANGE OF TRAINEES

The parties agree to further the exchange of trainees, and to determine in a separate agreement the conditions governing such exchanges.

ARTICLE 11. CONDITIONS OF TRANSPORT

1. During the journey from their place of residence to the assembly or selection centre, as well as during their stay in the said centre, migrants *and the members of their families* shall receive from the competent authority of the territory of immigration [or in the case of refugees and displaced persons, from any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] any assistance which they may require.

2. The competent authorities of the territories of emigration and immigration shall, each within its own jurisdiction, safeguard the health and welfare of, and render assistance to, migrants *and the members of their families* during the journey from the assembly or selection centre to the place of their employment, as well as during their stay in a reception centre if such exists.

3. Migrants *and members of their families* shall be transported in a manner appropriate for human beings and in conformity with the laws and regulations in force.

4. The parties shall agree upon the terms and conditions for the application of the provisions of this Article.

ARTICLE 12. TRAVEL AND MAINTENANCE EXPENSES

The parties shall agree upon the methods for meeting the cost of travel of the migrants *and the members of their families* from the place of their residence to the place of their destination, and the cost of their maintenance while travelling, sick or hospitalised, as well as the cost of transport of their personal belongings.

ARTICLE 13. TRANSFER OF FUNDS

1. The competent authority of the territory of emigration shall, as far as possible and in conformity with national laws and regulations concerning the import and export of foreign currency, authorise and provide facilities for migrants *and for members of their families* to withdraw from their country such sums as they may need for their initial settlement abroad.

2. The competent authority of the territory of immigration shall, as far as possible and in conformity with national laws and regulations concerning the import and export of foreign currency, authorise and provide facilities for the periodical transfer to the territory of emigration of migrants' savings and of any other sums due in virtue of this Agreement.

3. The transfers of funds mentioned in paragraphs 1 and 2 above shall be made at the prevailing official rate of exchange.

4. The parties shall take all measures necessary for the simplification and acceleration of administrative formalities regarding the transfer of funds so that such funds may be available with the least possible delay to those entitled to them.

5. The parties shall determine if and under what conditions a migrant may be required to remit part of his wages for the maintenance of his family remaining in his country or in the territory from which he emigrated.

ARTICLE 14. ADAPTATION AND NATURALISATION

The competent authority of the territory of immigration shall take measures to facilitate adaptation to national climatic, economic and social conditions and facilitate the procedure of naturalisation of migrants and of members of their families.

ARTICLE 15. SUPERVISION OF LIVING AND WORKING CONDITIONS

1. Provision shall be made for the supervision by the competent authority or duly authorised bodies of the territory of immigration of the living and working conditions, including hygienic conditions, to which the migrants are subject.

2. With respect to temporary migrants, the parties shall provide, where appropriate, for authorised representatives of the territory of emigration [or in the case of refugees and displaced persons, of any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] to

co-operate with the competent authority or duly authorised bodies of the territory of immigration in carrying out this supervision.

3. During a fixed period, the duration of which shall be determined by the parties, migrants shall receive special assistance in regard to matters concerning their conditions of employment.

4. Assistance with respect to the employment and living conditions of the migrants may be given either through the regular labour inspection service of the territory of immigration or through a special service for migrants, in co-operation where appropriate with approved voluntary organisations.

5. Provision shall be made where appropriate for the co-operation of representatives of the territory of emigration [or in the case of refugees and displaced persons, of any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] with such services.

ARTICLE 16. SETTLEMENT OF DISPUTES

1. In case of a dispute between a migrant and his employer, the migrant shall have access to the appropriate courts or shall otherwise obtain redress for his grievances, in accordance with the laws and regulations of the territory of immigration.

2. The authorities shall establish such other machinery as is necessary to settle disputes arising out of the Agreement.

ARTICLE 17. EQUALITY OF TREATMENT

1. The competent authority of the territory of immigration shall grant to migrants *and to members of their families* with respect to employment in which they are eligible to engage treatment no less favourable than that applicable to its own nationals in virtue of legal or administrative provisions or collective labour agreements.

2. Such equality of treatment shall apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within the territory of immigration in respect of the following matters:

(a) in so far as such matters are regulated by laws or regulations or are subject to the control of administrative authorities,

  (i) remuneration, including family allowances where these form part of remuneration, hours of work, weekly rest days, overtime arrangements, holidays with pay and other regulations concerning employment, including limitations on home work, minimum age provisions, women's work, and the work of young persons;

  (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;

  (iii) admission to schools, to apprenticeship and to courses or schools for vocational or technical training, provided that this does not prejudice nationals of the country of immigration;

  (iv) recreation and welfare measures;

(b) employment taxes, dues or contributions payable in respect of the persons employed;

(c) hygiene, safety and medical assistance;

(d) legal proceedings relating to the matters referred to in this Agreement.

ARTICLE 18. ACCESS TO TRADES AND OCCUPATIONS AND THE RIGHT TO ACQUIRE PROPERTY

Equality of treatment shall also apply to —

(a) *access to trades and occupations to the extent permitted under national laws and regulations;*

(b) *acquisition, possession and transmission of urban or rural property.*

ARTICLE 19. SUPPLY OF FOOD

The treatment applied to migrants *and the members of their families* shall be the same as that applied to national workers in the same occupation as regards the supply of food.

ARTICLE 20. HOUSING CONDITIONS

The competent authority of the territory of immigration shall ensure that migrants *and the members of their families* have hygienic and suitable housing, in so far as the necessary housing is available.

ARTICLE 21. SOCIAL SECURITY

1. The two parties shall determine in a separate agreement the methods of applying a system of social security to migrants and their dependants.

2. *Such agreement shall provide that the competent authority of the territory of immigration shall take measures to ensure to the migrants and their dependants treatment not less favourable than that afforded by it to its nationals, except where particular residence qualifications apply to nationals.*

3. *The agreement shall embody appropriate arrangements for the maintenance of migrants' acquired rights and rights in course of acquisition framed with due regard to the principles of the Maintenance of Migrants' Pension Rights Convention, 1935, or of any revision of that Convention.*

4. The agreement shall provide that the competent authority of the territory of immigration shall take measures to grant to temporary migrants and their dependants treatment not less favourable than that afforded by it to its nationals, subject in the case of compulsory pension schemes to appropriate arrangements being made for the maintenance of migrants' acquired rights and rights in course of acquisition.

ARTICLE 22. CONTRACTS OF EMPLOYMENT

1. In countries where a system of model contracts is used, the individual contract of employment for migrants shall be based on a model contract drawn up by the parties for the principal branches of economic activity.

2. The individual contract of employment shall set forth the general conditions of engagement and of employment provided in the relevant model contract and shall be

translated into a language which the migrant understands. A copy of the contract shall be delivered to the migrant before departure from the territory of emigration or, if it is agreed between the two parties concerned, in a reception centre on arrival in the territory of immigration. In the latter case before departure the migrant shall be informed in writing by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category in which he is to be engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.

3. The individual contract of employment shall contain necessary information, such as —

(a) the full name of the worker as well as the date and place of birth, his family status, his place of residence and of recruitment;

(b) the nature of the work, and the place where it is to be performed;

(c) the occupational category in which he is placed;

(d) remuneration for ordinary hours of work, overtime, night work and holidays, and the medium for wage payment;

(e) bonuses, indemnities and allowances, if any;

(f) conditions under which and extent to which the employer may be authorised to make any deductions from remuneration;

(g) conditions regarding food if food is to be provided by the employer;

(h) the duration of the contract as well as the conditions of renewal and denunciation of the contract;

(i) the conditions under which entry and residence in the territory of immigration are permitted;

(j) the method of meeting the expenses of the journey of the migrant *and the members of his family*;

(k) in case of temporary migration, the method of meeting the expenses of return to the home country or the territory of migration, as appropriate;

(l) the grounds on which a contract may be prematurely terminated.

ARTICLE 23. CHANGE OF EMPLOYMENT

1. If the competent authority of the territory of immigration considers that the employment for which the migrant has been recruited does not correspond to his physical capacity or occupational qualifications, the said authority shall provide facilities for placing the said migrant in an employment corresponding to his capacity or qualifications, and in which he may be employed in accordance with national laws or regulations.

2. During periods of unemployment, if any, the method of maintaining the migrant *and the dependent members of his family authorised to accompany or join him* shall be determined by arrangements made under a separate agreement.

ARTICLE 24. EMPLOYMENT STABILITY

1. If before the expiration of the period of his contract the migrant for employment becomes redundant in the undertaking or branch of economic activity for which he was engaged, the competent authority of the territory of immigration shall, subject to the provisions of the contract, facilitate the placing of the said migrant in other suitable

employment in which he may be employed in accordance with national laws or regulations.

2. If the migrant is not entitled to benefits under an unemployment insurance or assistance scheme, his maintenance, *as well as that of dependent members of his family*, during any period in which he is unemployed shall be determined by a separate agreement in so far as this is not inconsistent with the terms of his contract.

3. The provisions of this Article shall not affect the right of the migrant to benefit from any provisions that may be included in his contract in case it is prematurely terminated by the employer.

ARTICLE 25. PROVISIONS CONCERNING COMPULSORY RETURN

1. The competent authority of the territory of immigration undertakes that a migrant *and the members of his family who have been authorised to accompany or join him* will not be returned to the territory from which he emigrated unless he so desires if, because of illness or injury, he is unable to follow his occupation.

2. The Government of the territory of immigration undertakes not to send refugees and displaced persons or migrants who do not wish to return to their country of origin for political reasons back to their territory of origin as distinct from the territory from which they were recruited, unless they formally express this desire by a request in writing addressed both to the competent authority of the territory of immigration and the representative of the body set up in accordance with the provisions of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government.

ARTICLE 26. RETURN JOURNEY

1. The cost of the return journey of a migrant introduced under a plan sponsored by the Government of the territory of immigration, who is obliged to leave his employment for reasons for which he is not responsible, and who cannot, in virtue of national laws and regulations, be placed in an employment for which he is eligible, shall be regulated as follows:

(a) the cost of the return journey of the migrant, and persons dependent upon him, shall in no case fall on the migrant himself;

(b) supplementary bilateral agreements shall specify the method of meeting the cost of this return journey;

(c) in any case, even if no provision to this effect is included in a bilateral agreement, the information given to migrants at the time of their recruitment shall specify what person or agency is responsible for defraying the cost of return in the circumstances mentioned in this Article.

2. In accordance with the methods of co-operation and consultation agreed upon under Article 28 of this Agreement, the two parties shall determine the measures necessary to organise the return home of the said persons and to assure to them in the course of the journey the conditions of health and welfare and the assistance which they enjoyed during the outward journey.

3. The competent authority of the territory of emigration shall exempt from customs duties on their arrival —

(a) personal effects; and

(b) portable hand-tools and portable equipment of the kind normally owned by workers for the carrying out of their particular trades, which have been in possession and use of the said persons for an appreciable time and which are intended to be used by them in the course of their occupation.

ARTICLE 27. DOUBLE TAXATION

The two parties shall determine in a separate agreement the measures to be taken to avoid double taxation on the earnings of a migrant for employment.

ARTICLE 28. METHODS OF CO-OPERATION

1. The two parties shall agree on the methods of consultation and co-operation necessary to carry out the terms of the Agreement.

2. When so requested by the representatives of the two parties the International Labour Office shall be associated with such consultation and co-operation.

ARTICLE 29. FINAL PROVISIONS

1. The parties shall determine the duration of the Agreement as well as the period of notice for termination.

2. The parties shall determine those provisions of this Agreement which shall remain in operation after expiration of this Agreement.

APPENDIX B

TEXTS OF THE INSTRUMENTS OF 1975

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixtieth Session on 4 June 1975, and

Considering that the Preamble of the Constitution of the International Labour Organisation assigns to it the task of protecting "the interests of workers when employed in countries other than their own", and

Considering that the Declaration of Philadelphia reaffirms, among the principles on which the Organisation is based, that "labour is not a commodity", and that "poverty anywhere constitutes a danger to prosperity everywhere", and recognises the solemn obligation of the ILO to further programmes which will achieve in particular full employment through "the transfer of labour, including for employment ...",

Considering the ILO World Employment Programme and the Employment Policy Convention and Recommendation, 1964, and emphasising the need to avoid the excessive and uncontrolled or unassisted increase of migratory movements because of their negative social and human consequences, and

Considering that in order to overcome underdevelopment and structural and chronic unemployment, the governments of many countries increasingly stress the desirability of encouraging the transfer of capital and technology rather than the transfer of workers in accordance with the needs and requests of these countries in the reciprocal interest of the countries of origin and the countries of employment, and

Considering the right of everyone to leave any country, including his own, and to enter his own country, as set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and

Recalling the provisions contained in the Migration for Employment Convention and Recommendation (Revised), 1949, in the Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955, in the Employment Policy Convention and Recommendation, 1964, in the Employment Service Convention and Recommendation, 1948, and in the Fee-Charging Employment Agencies Convention (Revised), 1949, which deal with such matters as the regulation of the recruitment, introduction and placing of migrant workers, the provision of accurate information relating to migration, the minimum conditions to be enjoyed by migrants in transit and on arrival, the adoption of an active employment policy and international collaboration in these matters, and

Considering that the emigration of workers due to conditions in labour markets should take place under the responsibility of official agencies for employment or in accordance with the relevant bilateral or multilateral agreements, in particular those permitting free circulation of workers, and

Considering that evidence of the existence of illicit and clandestine trafficking in labour calls for further standards specifically aimed at eliminating these abuses, and

Recalling the provisions of the Migration for Employment Convention (Revised), 1949, which require ratifying Members to apply to immigrants lawfully within their territory treatment not less favourable than that which they apply to their nationals in respect of a variety of matters which it enumerates, in so far as these are regulated by laws or regulations or subject to the control of administrative authorities, and

Recalling that the definition of the term "discrimination" in the Discrimination (Employment and Occupation) Convention, 1958, does not mandatorily include distinctions on the basis of nationality, and

Considering that further standards, covering also social security, are desirable in order to promote equality of opportunity and treatment of migrant workers and, with regard to matters regulated by laws or regulations or subject to the control of administrative authorities, ensure treatment at least equal to that of nationals, and

Noting that, for the full success of action regarding the very varied problems of migrant workers, it is essential that there be close co-operation with the United Nations and other specialised agencies, and

Noting that, in the framing of the following standards, account has been taken of the work of the United Nations and of other specialised agencies and that, with a view to avoiding duplication and to ensuring appropriate co-ordination, there will be continuing co-operation in promoting and securing the application of the standards, and

Having decided upon the adoption of certain proposals with regard to migrant workers, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention supplementing the Migration for Employment Convention (Revised), 1949, and the Discrimination (Employment and Occupation) Convention, 1958,

adopts this twenty-fourth day of June of the year one thousand nine hundred and seventy-five the following Convention, which may be cited as the Migrant Workers (Supplementary Provisions) Convention, 1975:

PART I. MIGRATIONS IN ABUSIVE CONDITIONS

Article 1

Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers.

Article 2

1. Each Member for which this Convention is in force shall systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations.

2. The representative organisations of employers and workers shall be fully consulted and enabled to furnish any information in their possession on this subject.

Article 3

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members —

(a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and

(b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions, in order to prevent and to eliminate the abuses referred to in Article 2 of this Convention.

Article 4

In particular, Members shall take such measures as are necessary, at the national and the international level, for systematic contact and exchange of information on the subject with other States, in consultation with representative organisations of employers and workers.

Article 5

One of the purposes of the measures taken under Articles 3 and 4 of this Convention shall be that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities.

Article 6

1. Provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers, in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention, and in respect of knowing assistance to such movements, whether for profit or otherwise.

2. Where an employer is prosecuted by virtue of the provision made in pursuance of this Article, he shall have the right to furnish proof of his good faith.

Article 7

The representative organisations of employers and workers shall be consulted in regard to the laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate the abuses referred to above, and the possibility of their taking initiatives for this purpose shall be recognised.

Article 8

1. On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.

2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

Article 9

1. Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

2. In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his case to a competent body, either himself or through a representative.

3. In case of expulsion of the worker or his family, the cost shall not be borne by them.

4. Nothing in this Convention shall prevent Members from giving persons who are illegally residing or working within the country the right to stay and to take up legal employment.

PART II. EQUALITY OF OPPORTUNITY AND TREATMENT

Article 10

Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.

Article 11

1. For the purpose of this Part of this Convention, the term "migrant worker" means a person who migrates or who has migrated from one country to another with a

view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker.

2. This Part of this Convention does not apply to —

(a) frontier workers;

(b) artistes and members of the liberal professions who have entered the country on a short-term basis;

(c) seamen;

(d) persons coming specifically for purposes of training or education;

(e) employees of organisations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments.

Article 12

Each Member shall, by methods appropriate to national conditions and practice —

(a) seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the policy provided for in Article 10 of this Convention;

(b) enact such legislation and promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) take measures, encourage educational programmes and develop other activities aimed at acquainting migrant workers as fully as possible with the policy, with their rights and obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection;

(d) repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(e) in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment;

(f) take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue;

(g) guarantee equality of treatment, with regard to working conditions, for all migrant workers who perform the same activity whatever might be the particular conditions of their employment.

Article 13

1. A Member may take all necessary measures which fall within its competence and collaborate with other Members to facilitate the reunification of the families of all migrant workers legally residing in its territory.

2. The members of the family of the migrant worker to which this Article applies are the spouse and dependent children, father and mother.

Article 14

A Member may —

(a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;

(b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;

(c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

PART III. FINAL PROVISIONS

Article 15

This Convention does not prevent Members from concluding multilateral or bilateral agreements with a view to resolving problems arising from its application.

Article 16

1. Any Member which ratifies this Convention may, by a declaration appended to its ratification, exclude either Part I or Part II from its acceptance of the Convention.

2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

3. Every Member for which a declaration made under paragraph 1 of this Article is in force shall indicate in its reports upon the application of this Convention the position of its law and practice in regard to the provisions of the Part excluded from its acceptance, the extent to which effect has been given, or is proposed to be given, to the said provision and the reasons for which it has not yet included them in its acceptance of the Convention.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides —

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English and French versions of the text of this Convention are equally authoritative.

Migrant Workers Recommendation, 1975 (No. 151)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixtieth Session on 4 June 1975, and

Considering that the Preamble of the Constitution of the International Labour Organisation assigns to it the task of protecting "the interests of workers when employed in countries other than their own", and

Recalling the provisions contained in the Migration for Employment Convention and Recommendation (Revised), 1949, and in the Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955, which deal with such matters as the preparation and organisation of migration, social services to be provided to migrant workers and their families, in particular before their departure and during their journey, equality of treatment as regards a variety of matters which they enumerate, and the regulation of the stay and return of migrant workers and their families, and

Having adopted the Migrant Workers (Supplementary Provisions) Convention, 1975, and

Considering that further standards are desirable as regards equality of opportunity and treatment, social policy in regard to migrants and employment and residence, and

Having decided upon the adoption of certain proposals with regard to migrant workers, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-fourth day of June of the year one thousand nine hundred and seventy-five the following Recommendation, which may be cited as the Migrant Workers Recommendation, 1975:

1. Members should apply the provision of this Recommendation within the framework of a coherent policy on international migration for employment. That policy should be based upon the economic and social needs of both countries of origin and countries of employment; it should take account not only of short-term manpower needs and resources but also of the long-term social and economic consequences of migration for migrants as well as for the communities concerned.

I. EQUALITY OF OPPORTUNITY AND TREATMENT

2. Migrant workers and members of their families lawfully within the territory of a Member should enjoy effective equality of opportunity and treatment with nationals of the Member concerned in respect of —

(a) access to vocational guidance and placement services;

(b) access to vocational training and employment of their own choice on the basis of individual suitability for such training or employment, account being taken of qualifications acquired outside the territory of and in the country of employment;

(c) advancement in accordance with their individual character, experience, ability and diligence;

(d) security of employment, the provision of alternative employment, relief work and retraining;

(e) remuneration for work of equal value;

(f) conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;

(g) membership of trade unions, exercise of trade union rights and eligibility for office in trade unions and in labour-management relations bodies, including bodies representing workers in undertakings;

(h) rights of full membership in any form of co-operative;

(i) conditions of life, including housing and the benefits of social services and educational and health facilities.

3. Each Member should ensure the application of the principles set forth in Paragraph 2 of this Recommendation in all activities under the control of a public authority and promote its observance in all other activities by methods appropriate to national conditions and practice.

4. Appropriate measures should be taken, with the collaboration of employers' and workers' organisations and other bodies concerned, with a view to —

(a) fostering public understanding and acceptance of the above-mentioned principles;

(b) examining complaints that these principles are not being observed and securing the correction, by conciliation or other appropriate means, of any practices regarded as in conflict therewith.

5. Each Member should ensure that national laws and regulations concerning residence in its territory are so applied that the lawful exercise of rights enjoyed in pursuance of these principles cannot be the reason for non-renewal of a residence permit or for expulsion and is not inhibited by the threat of such measures.

6. A Member may —

(a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;

(b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;

(c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

7. (1) In order to enable migrant workers and their families to take full advantage of their rights and opportunities in employment and occupation, such measures as may be

necessary should be taken, in consultation with the representative organisations of employers and workers —

(a) to inform them, as far as possible in their mother tongue or, if that is not possible, in a language with which they are familiar, of their rights under national law and practice as regards the matters dealt with in Paragraph 2 of this Recommendation;

(b) to advance their knowledge of the language or languages of the country of employment, as far as possible during paid time;

(c) generally, to promote their adaptation to the society of the country of employment and to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue.

(2) Where agreements concerning the collective recruitment of workers have been concluded between Members, they should jointly take the necessary measures before the migrants' departure from their country of origin to introduce them to the language of the country of employment and also to its economic, social and cultural environment.

8. (1) Without prejudice to measures designed to ensure that migrant workers and their families enter national territory and are admitted to employment in conformity with the relevant laws and regulations, a decision should be taken as soon as possible in cases in which these laws and regulations have not been respected so that the migrant worker should know whether his position can be regularised or not.

(2) Migrant workers whose position has been regularised should benefit from all rights which, in accordance with Paragraph 2 of this Recommendation, are provided for migrant workers lawfully within the territory of a Member.

(3) Migrant workers whose position has not been or could not be regularised should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.

(4) In case of dispute about the rights referred to in the preceding subparagraphs, the worker should have the possibility of presenting his case to a competent body, either himself or through a representative.

(5) In case of expulsion of the worker or his family, the cost should not be borne by them.

II. SOCIAL POLICY

9. Each Member should, in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment.

10. With a view to making the policy as responsive as possible to the real needs of migrant workers and their families, it should be based, in particular, on an examination not only of conditions in the territory of the Member but also of those in the countries of origin of the migrants.

11. The policy should take account of the need to spread the social cost of migration as widely and equitably as possible over the entire collectivity of the country of employment, and in particular over those who profit most from the work of migrants.

12. The policy should be periodically reviewed and evaluated and where necessary revised.

A. Reunification of Families

13. (1) All possible measures should be taken both by countries of employment and by countries of origin to facilitate the reunification of families of migrant workers as rapidly as possible. These measures should include, as necessary, national laws or regulations and bilateral and multilateral arrangements.

(2) A prerequisite for the reunification of families should be that the worker has, for his family, appropriate accommodation which meets the standards normally applicable to nationals of the country of employment.

14. Representatives of all concerned, and in particular of employers and workers, should be consulted on the measures to be adopted to facilitate the reunification of families and their co-operation sought in giving effect thereto.

15. For the purpose of the provisions of this Recommendation relating to the reunification of families, the family of the migrant worker should include the spouse and dependent children, father and mother.

16. With a view to facilitating the reunification of families as quickly as possible in accordance with Paragraph 13 of this Recommendation, each Member should take full account of the needs of migrant workers and their families in particular in its policy regarding the construction of family housing, assistance in obtaining this housing and the development of appropriate reception services.

17. Where a migrant worker who has been employed for at least one year in a country of employment cannot be joined by his family in that country, he should be entitled —

(a) to visit the country of residence of his family during the paid annual holiday to which he is entitled under the national law and practice of the country of employment without losing during the absence from that country any acquired rights or rights in course of acquisition and, particularly, without having his employment terminated or his right to residence in the country of employment withdrawn during that period; or

(b) to be visited by his family for a period corresponding at least to the annual holiday with pay to which he is entitled.

18. Consideration should be given to the possibility of giving the migrant worker financial assistance towards the cost of the travel envisaged in the preceding Paragraph or a reduction in the normal cost of transport, for instance by the arrangement of group travel.

19. Without prejudice to more favourable provisions which may be applicable to them, persons admitted in pursuance of international arrangements for free movement of labour should have the benefit of the measures provided for in Paragraphs 13 to 18 of this Recommendation.

B. Protection of the Health of Migrant Workers

20. All appropriate measures should be taken to prevent any special health risks to which migrant workers may be exposed.

21. (1) Every effort should be made to ensure that migrant workers receive training and instruction in occupational safety and occupational hygiene in connection with their practical training or other work preparation, and, as far as possible, as part thereof.

(2) In addition, a migrant worker should, during paid working hours and immediately after beginning his employment, be provided with sufficient information in his mother tongue or, if that is not possible, in a language with which he is familiar, on the essential elements of laws and regulations and on provisions of collective agreements concerning the protection of workers and the prevention of accidents as well as on safety regulations and procedures particular to the nature of the work.

22. (1) Employers should take all possible measures so that migrant workers may fully understand instructions, warnings, symbols and other signs relating to safety and health hazards at work.

(2) Where, on account of the migrant workers' lack of familiarity with processes, language difficulties or other reasons, the training or instruction given to other workers is inadequate for them, special measures which ensure their full understanding should be taken.

(3) Members should have laws or regulations applying the principles set out in this Paragraph and provide that where employers or other persons or organisations having responsibility in this regard fail to observe such laws or regulations, administrative, civil and penal sanctions might be imposed.

C. Social Services

23. In accordance with the provisions of Paragraph 2 of this Recommendation, migrant workers and their families should benefit from the activities of social services and have access thereto under the same conditions as nationals of the country of employment.

24. In addition, social services should be provided which perform, in particular, the following functions in relation to migrant workers and their families —

(a) giving migrant workers and their families every assistance in adapting to the economic, social and cultural environment of the country of employment;

(b) helping migrant workers and their families to obtain information and advice from appropriate bodies, for instance by providing interpretation and translation services; to comply with administrative and other formalities; and to make full use of services and facilities provided in such fields as education, vocational training and language training, health services and social security, housing, transport and recreation: Provided that migrant workers and their families should as far as possible have the right to communicate with public authorities in the country of employment in their own language or in a language with which they are familiar, particularly in the context of legal assistance and court proceedings;

(c) assisting authorities and bodies with responsibilities relating to the conditions of life and work of migrant workers and their families in identifying their needs and in adapting thereto;

(d) giving the competent authorities information and, as appropriate, advice regarding the formulation, implementation and evaluation of social policy with respect to migrant workers;

(e) providing information for fellow workers and foremen and supervisors about the situation and the problems of migrant workers.

25. (1) The social services referred to in Paragraph 24 of this Recommendation may be provided, as appropriate to national conditions and practice, by public authorities, by approved non-profit-making organisations or bodies, or by a combination of both. The public authorities should have the over-all responsibility of ensuring that these social services are at the disposal of migrant workers and their families.

(2) Full use should be made of services which are or can be provided by authorities, organisations and bodies serving the nationals of the country of employment, including employers' and workers' organisations.

26. Each Member should take such measures as may be necessary to ensure that sufficient resources and adequately trained staff are available for the social services referred to in Paragraph 24 of this Recommendation.

27. Each Member should promote co-operation and co-ordination between different social services on its territory and, as appropriate, between these services and corresponding services in other countries, without, however, this co-operation and co-ordination relieving the States of their responsibilities in this field.

28. Each Member should organise and encourage the organisation, at the national, regional or local level, or as appropriate in a branch of economic activity employing substantial numbers of migrant workers, of periodic meetings for the exchange of information and experience. Consideration should also be given to the exchange of information and experience with other countries of employment as well as with the countries of origin of migrant workers.

29. Representatives of all concerned and in particular of employers and workers should be consulted on the organisation of the social services in question and their co-operation sought in achieving the purposes aimed at.

III. EMPLOYMENT AND RESIDENCE

30. In pursuance of the provision of Paragraph 18 of the Migration for Employment Recommendation (Revised), 1949, that Members should, as far as possible, refrain from removing from their territory, on account of lack of means or the state of the employment market, a migrant worker regularly admitted thereto, the loss by such migrant worker of his employment should not in itself imply the withdrawal of his authorisation of residence.

31. A migrant who has lost his employment should be allowed sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefit; the authorisation of residence should be extended accordingly.

32. (1) A migrant worker who has lodged an appeal against the termination of his employment, under such procedures as may be available, should be allowed sufficient time to obtain a final decision thereon.

(2) If it is established that the termination of employment was not justified, the migrant worker should be entitled, on the same terms as national workers, to reinstatement, to compensation for loss of wages or of other payment which results from unjustified termination, or to access to a new job with a right to indemnification. If he is not reinstated, he should be allowed sufficient time to find alternative employment.

33. A migrant worker who is the object of an expulsion order should have a right of appeal before an administrative or judicial instance, according to conditions laid down

in national laws or regulations. This appeal should stay the execution of the expulsion order, subject to the duly substantiated requirements of national security or public order. The migrant worker should have the same right to legal assistance as national workers and have the possibility of being assisted by an interpreter.

34. (1) A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his stay therein —

(a) to any outstanding remuneration for work performed, including severance payments normally due;

(b) to benefits which may be due in respect of any employment injury suffered;

(c) in accordance with national practice —

  (i) to compensation in lieu of any holiday entitlement acquired but not used;

  (ii) to reimbursement of any social security contributions which have not given and will not give rise to rights under national laws or regulations or international arrangements: Provided that where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants.

(2) Where any claim covered in subparagraph (1) of this Paragraph is in dispute, the worker should be able to have his interests represented before the competent body and enjoy equal treatment with national workers as regards legal assistance.

APPENDIX C

RATIFICATIONS OF CONVENTIONS NOS. 97 AND 143

Migration for Employment Convention (Revised), 1949 (No. 97)

Date of entry into force: 22.01.1952

States	Ratification registered
Algeria[1]	19.10.1962
Bahamas[2]	25.05.1976
Barbados[2]	08.05.1967
Belgium	27.07.1953
Belize	15.12.1983
Bosnia and Herzegovina[3]	02.06.1993
Brazil	18.06.1965
Burkina Faso	09.06.1961
Cameroon[2]	03.09.1962
Cuba	29.04.1952
Cyprus[2]	23.09.1960
Dominica[2]	28.02.1983
Ecuador[2]	05.04.1978
France[1]	29.03.1954
Germany	22.06.1959
Grenada[2]	09.07.1979
Guatemala	13.02.1952
Guyana[2]	08.06.1966
Israel	30.03.1953
Italy	22.10.1952
Jamaica[2]	26.12.1962
Kenya[2]	30.11.1965
Malawi	22.03.1965
Malaysia (Sabah)[2]	03.03.1964
Mauritius[2]	02.12.1969
Netherlands	20.05.1952
New Zealand[4]	10.11.1950
Nigeria[2]	17.02.1955
Norway	17.02.1955
Portugal	12.12.1978
Saint Lucia[2]	14.05.1980
Slovenia[3]	29.05.1992
Spain	21.03.1967
Tanzania (Zanzibar)[2]	22.06.1964
The former Yugoslav Republic of Macedonia	17.11.1991
Trinidad and Tobago[2]	24.05.1963
United Kingdom[5]	22.01.1951
Uruguay	18.03.1954
Venezuela	09.06.1983
Yugoslavia[3,6]	02.12.1964
Zambia[2]	02.12.1964

Total of ratifications: 41

---

[1] Has excluded the provisions of Annex II. [2] Has excluded the provisions of Annexes I to III. [3] Has excluded the provisions of Annex III. [4] Has excluded the provisions of Annex I. [5] Has excluded the provisions of Annexes I and III. [6] With regard to the former Socialist Federal Republic of Yugoslavia, the Federal Republic of Yugoslavia (namely, the territory of Serbia and Montenegro) has still not been recognized in its capacity as Member of the ILO as the successor State to the former Socialist Federal Republic of Yugoslavia as at 11 Dec. 1998.

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Date of entry into force: 09.12.1978

States	Ratification registered	States	Ratification registered
Benin	11.06.1980	Slovenia	29.05.1992
Bosnia and Herzegovina	02.06.1993	Sweden	28.12.1982
Burkina Faso	09.12.1977	The former Yugoslav Republic of Macedonia	17.11.1991
Cameroon	04.07.1978	Togo	08.11.1983
Cyprus	28.06.1977	Uganda	31.03.1978
Guinea	05.06.1978	Venezuela	09.06.1983
Italy	23.06.1981	Yugoslavia[1]	02.12.1964
Kenya	09.04.1979		
Norway	24.01.1979		
Portugal	12.12.1978		
San Marino	23.05.1985	Total of ratifications: 18	

---

[1] With regard to the former Socialist Federal Republic of Yugoslavia, the Federal Republic of Yugoslavia (namely, the territory of Serbia and Montenegro) has still not been recognized in its capacity as Member of the ILO as the successor State to the former Socialist Federal Republic of Yugoslavia as at 11 Dec. 1998.

APPENDIX D

TABLE OF REPORTS DUE AND RECEIVED ON THE MIGRATION FOR EMPLOYMENT CONVENTION (REVISED) (NO. 97) AND RECOMMENDATION (REVISED) (NO. 86), 1949, AND ON THE MIGRANT WORKERS (SUPPLEMENTARY PROVISIONS) CONVENTION (NO. 143), AND MIGRANT WORKERS RECOMMENDATION (NO. 151), 1975

(ARTICLE 19 OF THE CONSTITUTION)

Article 19 of the Constitution of the International Labour Organization provides that Members shall "report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body" on the position of their law and practice in regard to the matters dealt with in unratified Conventions and Recommendations. The obligations of Members as regards Conventions are laid down in paragraph 5(e) of the above-mentioned article. Paragraph 6(d) deals with Recommendations, and paragraph 7(a) and (b) deals with the particular obligations of federal States. Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 19, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 218th (November 1981) Session, the Governing Body decided to discontinue the publication of summaries of reports on unratified Conventions and on Recommendations and to publish only a list of reports received, on the understanding that the Director-General would make available for consultation at the Conference the originals of all reports received and that copies of reports would be available to members of delegations on request.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

From now on, reports received under article 19 of the Constitution appear in simplified form in a table annexed to Report III (Part 1B) of the Committee of Experts on the Application of Conventions and Recommendations.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

The reports which are listed below refer to the Migration for Employment Convention (Revised) (No. 97) and Recommendation (Revised) (No. 86), 1949, and to the Migrant Workers (Supplementary Provisions) Convention,1975 (No. 143), and the Migrant Workers Recommendation, 1975 (No. 151).

Member States	Convention No. 97	Recommendation No. 86	Convention No. 143	Recommendation No. 151
Afghanistan	–	–	–	–
Albania	R	R	R	R
Algeria	Ratified	–	–	–
Angola	R	R	R	R
Antigua and Barbuda	R	R	R	R
Argentina	R	R	R	R
Armenia	–	–	–	–
Australia	R	R	R	R
Austria	R	R	R	R
Azerbaijan	R	R	R	R
Bahamas	Ratified	–	–	–
Bahrain	R	R	R	R
Bangladesh	–	–	–	–
Barbados	Ratified	R	R	R
Belarus	R	R	R	R
Belgium	Ratified	R	R	R
Belize	Ratified	–	–	–
Benin	R	R	Ratified	R
Bolivia	–	–	–	–
Bosnia and Herzegovina	Ratified	–	Ratified	–
Botswana	–	–	–	–
Brazil	Ratified	R	R	R
Bulgaria	R	R	R	R
Burkina Faso	Ratified	R	Ratified	R
Burundi	–	–	–	–
Cambodia	–	–	–	–
Cameroon	Ratified	R	Ratified	R
Canada	R	R	R	R
Cape Verde	R	R	R	R
Central African Republic	R	R	R	R
Chad	–	–	–	–
Chile	R	R	R	R
China	R	R	R	R
Colombia	R	R	R	R

Member States	Convention No. 97	Recommendation No. 86	Convention No. 143	Recommendation No. 151
Comoros	–	–	–	–
Congo	R	R	R	R
Costa Rica	–	–	–	–
Côte d Ivoire	R	R	R	R
Croatia	R	R	R	R
Cuba	Ratified	R	R	R
Cyprus	Ratified	R	Ratified	R
Czech Republic	R	R	R	R
Democratic Republic of the Congo	–	–	–	–
Denmark	–	–	–	–
Djibouti	–	–	–	–
Dominica	Ratified	–	–	–
Dominican Republic	–	–	–	–
Ecuador	Ratified	R	R	R
Egypt	R	R	R	R
El Salvador	–	–	–	–
Equatorial Guinea	–	–	–	–
Eritrea	–	–	–	–
Estonia	R	R	R	R
Ethiopia	R	R	R	R
Fiji	–	–	–	–
Finland	R	R	R	R
France	Ratified	R	R	R
Gabon	–	–	–	–
Gambia	–	–	–	–
Georgia	–	–	–	–
Germany	Ratified	R	R	R
Ghana	R	R	R	R
Greece	R	R	R	R
Grenada	Ratified	–	–	–
Guatemala	Ratified	R	R	R
Guinea	–	–	Ratified	–
Guinea-Bissau	–	–	–	–
Guyana	Ratified	–	–	–

Member States	Convention No. 97	Recommendation No. 86	Convention No. 143	Recommendation No. 151
Haiti	–	–	–	–
Honduras	–	–	–	–
Hungary	–	–	–	–
Iceland	–	–	–	–
India	R	R	R	R
Indonesia	R	R	R	R
Islamic Republic of Iran	–	–	–	–
Iraq	–	–	–	–
Ireland	R	R	R	R
Israel	Ratified	–	–	–
Italy	Ratified	R	Ratified	R
Jamaica	Ratified	R	R	R
Japan	R	R	R	R
Jordan	R	R	R	R
Kazakhstan	–	–	–	–
Kenya	Ratified	–	Ratified	–
Republic of Korea	R	R	R	R
Kuwait	R	R	R	R
Kyrgyzstan	R	R	R	R
Lao People's Democratic Republic	–	–	–	–
Latvia	–	–	–	–
Lebanon	R	R	R	R
Lesotho	–	–	–	–
Liberia	–	–	–	–
Libyan Arab Jamahiriya	–	–	–	–
Lithuania	R	R	R	R
Luxembourg	R	R	R	R
Madagascar	–	–	–	–
Malawi	Ratified	–	–	–
Malaysia	Ratified	–	–	–
Mali	R	R	R	R
Malta	–	–	–	–
Mauritania	–	–	–	–
Mauritius	Ratified	R	R	R

Member States	Convention No. 97	Recommendation No. 86	Convention No. 143	Recommendation No. 151
Mexico	R	R	R	R
Republic of Moldova	–	–	–	–
Mongolia	–	–	–	–
Morocco	R	R	R	R
Mozambique	R	R	R	R
Myanmar	–	–	–	–
Namibia	–	–	–	–
Nepal	R	–	R	–
Netherlands	Ratified	R	R	R
New Zealand	Ratified	R	R	R
Nicaragua	R	R	R	R
Niger	–	–	–	–
Nigeria	Ratified	–	–	–
Norway	Ratified	R	Ratified	R
Oman	R	R	R	R
Pakistan	R	R	R	R
Panama	R	R	R	R
Papua New Guinea	R	R	R	R
Paraguay	R	R	R	R
Peru	R	R	R	R
Philippines	R	R	R	R
Poland	R	R	R	R
Portugal	Ratified	R	Ratified	R
Qatar	R	R	R	R
Romania	R	R	R	R
Russian Federation	–	–	–	–
Rwanda	–	–	–	–
Saint Kitts and Nevis	–	–	–	–
Saint Lucia	Ratified	–	–	–
Saint Vincent and the Grenadines	–	–	–	–
San Marino	R	R	Ratified	R
Sao Tome and Principe	–	–	–	–
Saudi Arabia	R	R	R	R
Senegal	–	–	–	–

Member States	Convention No. 97	Recommendation No. 86	Convention No. 143	Recommendation No. 151
Seychelles	–	–	–	–
Sierra Leone	–	–	–	–
Singapore	R	R	R	R
Slovakia	R	R	R	R
Slovenia	Ratified	–	Ratified	–
Solomon Islands	–	–	–	–
Somalia	–	–	–	–
South Africa	R	R	R	R
Spain	Ratified	R	R	R
Sri Lanka	R	R	R	R
Sudan	–	–	–	–
Suriname	R	R	R	R
Swaziland	–	–	–	–
Sweden	R	R	Ratified	R
Switzerland	R	R	R	R
Syrian Arab Republic	R	R	R	R
Tajikistan	R	R	R	R
United Republic of Tanzania	Ratified	–	–	–
Thailand	R	R	R	R
The former Yugoslav Republic of Macedonia	Ratified	–	Ratified	–
Togo	R	R	Ratified	R
Trinidad and Tobago	Ratified	–	–	–
Tunisia	R	R	R	R
Turkey	R	R	R	R
Turkmenistan	–	–	–	–
Uganda	–	–	Ratified	–
Ukraine	–	–	–	–
United Arab Emirates	R	R	R	R
United Kingdom	Ratified	R	R	R
United States	R	R	R	R
Uruguay	Ratified	R	R	R
Uzbekistan	–	–	–	–
Venezuela	Ratified	R	Ratified	R
Viet Nam	R	R	R	R

Member States	Convention No. 97	Recommendation No. 86	Convention No. 143	Recommendation No. 151
Yemen	R	R	R	R
Zambia	Ratified	–	–	–
Zimbabwe	R	R	R	R

R = report received. — = report not received.

Note: In addition, a total of 33 reports have been received in respect of the following non-metropolitan territories in relation to one or all of the four instruments: United Kingdom (Anguilla, Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar, Guernsey, Isle of Man, Jersey, Montserrat, St. Helena).

APPENDIX E

LIST OF LEGISLATION RELATING TO MIGRANT WORKERS BY COUNTRY

Explanatory note: This annex contains a selection of the most important legal texts in the field of migration in those countries which have submitted reports under articles 19 and 22 of the ILO Constitution, and which the Committee has consulted in its preparatory work to this General Survey. Where possible, the Committee has listed for each country the Labour Code or basic labour legislation, in addition to legislation relating to migration. If some country listings are more detailed than others, this has been determined by the content of the reports which the Committee has examined, as well as the fact that the Committee has, in some cases, had access to other sources of information. It should equally be pointed out that this list of legislation is restricted in scope to migration in the strict sense of the term. The Committee has also examined, however, in addition to this information, constitutional texts, bilateral and multilateral agreements, legislation relating to freedom of association, social security, human rights law which contain provisions relating to the principle of non-discrimination in employment, and other pertinent legislation which, for practical reasons, it has not been possible to include on this list.

Albania

- Loi n° 7961 du 12 juillet 1995 portant Code du travail de la République d'Albanie.
- Loi n° 7959 du 25 mai 1995 relative à la migration.

Algeria

- Loi n° 78-12 du 5 août 1978 relative au statut général du travailleur.
- Loi n° 81-10 du 11 juillet 1981 relative aux conditions d'emploi des travailleurs étrangers.

Angola

- Ley núm. 6/81, Ley General del Trabajo.
- Ley núm. 3/94, de 21 de enero de 1994, por la cual se regula el sistema legal que rige los extranjeros en Angola.
- Ley núm. 7 por la que se aprueba el estatuto de los trabajadores contratados en régimen de cooperación.
- Decreto núm. 11, de 9 de junio de 1986, por el que se aprueba el reglamento de la contratación de los trabajadores extranjeros residentes, así como el contrato modelo.

Antigua and Barbuda

- Antigua Labour Code, No. 14 of 1975.
- Emigrant Labourers' Protection Act (Chapter 148 of the Laws of Antigua and Barbuda), 19 March 1924.
- Immigration and Passport Act (Chapter 150 of the Laws of Antigua and Barbuda), 30 December 1963.
- Work Permits Act, No. 6 of 1971.

Argentina

- Régimen de contrato de trabajo [texto ordenado de 1976; aprobado por ley núm. 20744, de 1974] última modificación en 1996.
- Ley núm. 24013, de 15 de diciembre de 1991, Ley Nacional de Empleo, modificada en 1995.
- Ley núm. 22439/81, Ley de Migraciones y Fomento de la Inmigración, modificada por la ley núm. 24393, de 18 de noviembre de 1994, sobre admisión de personas con discapacidad física o psíquica a la categoría de admisión de sus padres.
- Decreto núm. 1023/94 por el cual se aprueba el Reglamento de Migración.
- Ley núm. 24493 por la que se adoptan medidas en relación a la denominada «mano de obra nacional», de 1995, modificada por el decreto núm. 845/95.

Australia

- Workplace Relations Act, 1996, as amended to 12 March 1997.
- Migration Act, 1958, numerous amendments.
- Migration Regulations, No. 268 of 1994, as amended in 1994, 1995, 1996 and 1997.
- Migration Agents Regulations, No. 53 of 1998.

Austria

- Employment Promotion Act, BGB1 No. 685 of 1991, last amended by BGBl No. 450 of 1994.
- Employee Leasing Act, BGB1 No. 196 of 1988, last amended by BGBl No. 314 of 1994.
- Works Constitution Act, BGB1 No. 22 of 1974, last amended by BGBl. I No. 30 of 1998.
- Entry, Residence and Settlement of Foreigners Act (Federal), BGB1.I No. 75 of 1997.
- Employment of Foreigners Act, No. 218 of 1975, last amended by BGBl No. 78 of 1997.
- Employment of Foreigners Regulations, No. 609 of 1990, last amended by BGBl No. 666 of 1994.

Azerbaijan

- Individual Labour Contracts Act, 1995.
- Fundamental Principles Governing the Labour Legislation of 10 December 1971, as amended to 1 November 1993.

Bahamas

- Fair Labour Standards Act, No. 13 of 1970.
- Recruitment of Workers Act, 1939.
- Immigration Act, 1967, last amended in 1997.
- Immigration Regulations, last amended in 1994.

Bahrain

- Employment in the Private Sector Act, promulgated by Legislative Decree, No. 23 of 1976, amended by Legislative Decree in 1993.
- Duration of Work Permits for Non-Bahraini Workers, Procedures for their Renewal and Applicable Fees Order (Ministry of Labour and Social Affairs), No. 9 of 1994, as amended by Order No. 10 of 1995.
- Conditions and Procedures to be Observed in Contracts Concluded by Employers with Intermediaries for the Procurement of Non-Bahraini Labour from Abroad Order (Ministry of Labour and Social Affairs), No. 21 of 1994.

Barbados

- Immigration Act, 1952.
- Immigration Regulations, 1952.
- Emigration Act, 1904.

Belarus

- Labour Code, 1972, last amended 6 January 1998.
- Legal Status of Foreigners and Stateless Persons in the Republic of Belarus Act, No. 2339-XII.
- Regulation of Immigration for Employment Purposes Order (Council of Ministers), No. 832.
- State Migration Department Regulation, No. 544 of 1993.

Belgium

- Loi du 3 juillet 1978 relative au contrat de travail (nombreuses modifications).
- Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (dernière modification le 9 mars 1998).

- Arrêté royal du 6 novembre 1967 relatif aux conditions d'octroi et de retrait des autorisations d'occupation et des permis de travail pour les travailleurs de nationalité étrangère (dernière modification le 10 juin 1998).
- Arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (dernière modification le 12 juin 1998).

Belize

- Labour Act (Chapter 234 of the Laws of Belize), last amended by Act No. 17 of 1986.
- Immigration Act (Chapter 121 of the Laws of Belize, section 35), Immigration Regulations (amended in 1990 and 1991).
- Immigration Ordinance Act (Chapter 163 of the Laws of Belize), 1958, as amended by Ordinance No. 1 of 1966.

Benin

- Loi n° 98-004 du 27 janvier 1997 portant Code du travail en République du Bénin.
- Loi n° 86-012 du 26/2/86 portant régime des étrangers en République du Bénin.

Bosnia and Herzegovina

- Constitution of Bosnia and Herzegovina (Annex I: Additional Human Rights Agreements to be Applied in Bosnia and Herzegovina), 1995.

Brazil

- Decreto-ley núm. 5452, de 1.° de mayo de 1943, por el que se aprueba la Codificación de las Leyes del Trabajo (consolidación en 1985, última modificación en 1994).
- Código Penal (arts. 206-207).
- Ley núm. 6815, de 19 de agosto de 1980 por la cual se regula la situación jurídica de los extranjeros en Brasil y se crea el Consejo Nacional de Inmigración.
- Decreto núm. 86715, de 10 de diciembre de 1981 el cual reglamenta la ley núm. 6815.

Bulgaria

- Labour Code, 1986.
- Foreigners' Stay in the Republic Act, 1972, amended to 1994.
- Instruction on the Provisions of Issuing Work Permits to Foreigners Decree (Council of Ministers), No. 267 of 30 December 1992, amended to 1994.

Burkina Faso

- Décret n° 92-279/PRES du 31 décembre 1992 promulguant la loi n° 11/92/ADP du 22 décembre 1992 portant Code du travail.

- Décret n° 74/350/PRES/FPT du 10 septembre 1974 portant création d'une commission nationale permanente pour les problèmes de migration.

Cameroon

- Loi n° 92/007 du 14 août 1992 portant Code du travail.
- Loi n° 90-43 du 19 décembre 1990 relative aux conditions d'entrée, de séjour et de sortie du territoire camerounais.
- Décret n° 90/1246 du 24 août 1990 relative aux conditions d'entrée, de séjour et de sortie des étrangers du territoire camerounais.

Canada

Federal legislation

- Canada Labour Code R.S.C. 1985, c.L.2 proclaimed in force 12 December 1988; last amended on 20 March 1997.
- Immigration Act, last amended in 1997.
- Immigration Regulations, 1978, last amended in 1998.
- Federal Court Immigration Rules (1993), SOR/93-22.

Provincial legislation

Alberta

- Labour Relations Code, as amended to 5 July 1990.
- Employment Standards Code, as amended to 8 July 1992.

British Columbia

- Employment Standards Act, as amended to 28 June 1993.
- Labour Relations Code, 1992.

Manitoba

- Labour Relations Act, 1987, as amended to 1 January 1993.

Nova Scotia

- Nova Scotia Labour Standards Code.

Quebec

- Loi sur l'immigration (LRQ, c.1-0.2).
- Règlement relatif à la sélection des ressortissants étrangers (RRQ, c.M- 23.1, r.2).

Ontario

- Employment Agencies Act (Ontario).
- Employment Standards Act (Ontario).

Cape Verde

- Decreto ley núm. 62/87 sobre régimen jurídico general de las relaciones del trabajo modificado por decreto ley 51-A/89 y en 1993.

Central African Republic

- Loi n° 61/221 du 2 juin 1961 portant Code du travail.
- Loi n° 64-39 du 26 novembre 1964 instituant le contrôle de l'emploi des travailleurs étrangers.
- Ordonnance n° 73/095 du 9/11/73 réglementant le recrutement de la main-d'œuvre en République centrafricaine.
- Décret n° 64/336 de novembre 1964 sur les déclarations obligatoires de main-d'œuvre et sur le placement, modifié par le décret n° 73/462 du 9 novembre 1973.

Chile

- Decreto con fuerza de ley núm. 1, de 1994, por el cual se fija el texto refundido, coordinado y sistematizado del Código del Trabajo.
- Decreto ley núm. 1094, de 1975, que establece normas sobre extranjeros en el país, modificado por ley núm. 19273 de 1993.

China

- Labour Act, 5 July 1994.
- Administration of Employment of Foreigners in China Rules, 1996.
- Overseas Employment Services Administrative Regulations, 1992.

Hong Kong

- Employment Ordinance, Chapter 57.
- Immigration Ordinance, Chapter 115.
- Immigration (Amendment) Ordinance, No. 48 of 1992.

Colombia

- Ley núm. 50, de 28 de diciembre de 1990, por la que se introducen reformas al Código Sustantivo de Trabajo y se dictan otras disposiciones.
- Decreto ley núm. 2145, de 1992, de competencias del Ministerio del Trabajo.
- Decreto ley núm. 2371, de 1996, sobre Expedición de Visas, Control de Extranjeros y otras disposiciones en materia de inmigración.

Congo

- Loi n° 45/75 du 15 mars 1975 instituant le Code du travail (modifiée par la loi n° 6-96 du 6 mars 1996).
- Loi n° 23-96 du 6 juin 1996 fixant les conditions d'entrée, de séjour et de sortie des étrangers.

Côte d'Ivoire

- Loi nº 95-15 du 12 janvier 1995 portant Code du travail.
- Décret nº 96-193 du 7 mars 1996 (recrutement des non-nationaux).

Croatia

- Labour Act, 1995.
- Employment Act, 1996.
- Employment of Foreigners Act, 1992.
- Movement and Stay of Foreigners Act, 1991.
- Health Insurance of foreigners in the Republic of Croatia Act, 1997.

Cuba

- Ley núm. 49, de 28 de diciembre de 1985, Código del Trabajo.
- Ley núm. 1312, de 20 de septiembre de 1976, Ley de Migración.
- Ley núm. 1313, de 20 septiembre de 1976, Ley de Extranjería.
- Decreto núm. 26, de 19 de julio de 1978, Reglamento de la Ley de Migración.

Cyprus

- Foreigners and Migration Act, last amended in 1997.

Czech Republic

- Labour Code, 1965, amended and supplemented in 1991.
- Employment Act, No. 1 of 1991.
- Residence of Foreigners Act, No. 123 of 1992.

Dominica

- Recruiting of Workers Act (Chapter 117 in the Laws of Dominica), 1961.
- Caribbean Community Skilled Nationals Act, 1995.

Ecuador

- Codificación del Código del Trabajo, 1997.
- Ley de Extranjería.
- Reglamento a la Ley de Extranjería, 1986.
- Ley de Migración.
- Decreto núm. 1658, de 1994, por el cual se modifica el Reglamento a la Ley de Migración.

Egypt

- Labour Code Act, No. 137 of 1981, as amended to 1993.
- Regulations Governing the Recruitment of Egyptians for Employment Abroad Order (Ministry on Manpower and Training), No. 98 of 1991.
- Employment of Egyptian Workers by Foreign Establishments Act, No. 231 of 1996.

Estonia

- Employment Contracts Act, 15 April 1992, as amended to 18 December 1996.
- Aliens Act, 8 July 1993, as amended to 11 July 1997 (consolidated text), amended to 24 September 1997.

Ethiopia

- Labour Proclamation, No. 42 of 1993.
- Security, Immigration and Refugee Affairs Authority Establishment Proclamation, No. 6 of 1995.

Finland

- Employment Contracts Act, No. 320 of 1970.
- Finnish Aliens Act, No. 378 of 1991, as amended by Act No. 154 of 1995.

France

- Code du travail (dernières modifications 1997).
- Loi n° 98-349 du 11 mai 1998 relative à l'entrée et au séjour des étrangers en France.
- Loi n° 97-210 du 11 mars 1997 relative au renforcement de la lutte contre le travail illégal.
- Décret n° 97-213 du 11 mars 1997 relatif à la coordination de la lutte contre le travail illégal.
- Décret n° 97-638 du 31 mai 1997 pris pour l'application de la loi n° 97-210 du 11 mars 1997 relative au renforcement de la lutte contre le travail illégal.
- Loi n° 97-396 du 24 avril 1997 portant diverses dispositions relatives à l'immigration.
- Décret n° 98-314 du 24 avril 1998 portant création d'un délégué interministériel au codéveloppement et aux migrations internationales.

Germany

- Works Constitution Act, 15 January 1972.
- Illegal Employment Act, 15 December 1981.
- Foreigners Act, No. 1354 of 9 July 1990, as amended in 1997.
- Work Permits for Alien Workers Ordinance (Consolidated Text), 2 March 1971, numerous amendments.

Ghana

- Labour Decree, 1967.
- Labour Regulations, No. 632 of 1969.
- Aliens Act, 1963.
- Aliens (Amendment) Regulations, No. 1581 of 1994.

Greece

- Loi n° 1975/91 sur l'entrée, la sortie, le séjour, l'emploi, l'expulsion des étrangers, la procédure de reconnaissance des réfugiés, et autres dispositions.
- Décret présidentiel n° 358/97 sur la résidence légale et le travail des étrangers qui ne sont pas ressortissants des Etats membres de l'Union européenne.
- Décret présidentiel n° 359/97 sur l'octroi de carte de séjour de durée limitée aux étrangers.

Grenada

- Recruiting of Workers Act (Chapter 227 of the Laws of Grenada).
- Immigration (Restriction) Ordinance (Chapter 143 of the Revised Laws of Grenada), 1958.
- Immigration (Restriction) Regulations (Revised Laws of Grenada), No. 103, 1958.
- Immigration Act (Chapter 145 of the Laws of Grenada), 1990 (previously entitled the "Immigration Restriction Act 1969", renamed in 1990 upon revision).

Guatemala

- Código de Trabajo, de 29 de abril de 1971, en su tenor actualizado a 1995.
- Decreto-ley núm. 22-86 de Migración y Extranjería.
- Acuerdo Gubernativo núm. 316-95, Reglamento de Autorización del Trabajo de Personas Extranjeras a Empleadores del Sector Privado.

Guinea

- Ordonnance n° 003/PRG/SGG/88 du 28 janvier 1988 portant institution du Code du travail de la République de Guinée.
- Ordonnance n° 054/PRG/SG/87 du 22 juillet 1987 portant conditions d'entrée et de séjour des étrangers en République de Guinée.

Guyana

- Labour Act (Chapter 98:01), No. 2 of 1942 (Consolidated to 1973).
- Recruiting of Workers Ordinance (Chapter 106).
- Immigration Ordinance (Chapter 98).
- Indian Labour (Chapter 104 of the Laws of British Guyana), 1 July 1953.

Indonesia

- Manpower Affairs Act, No. 25 of 1997.
- Foreign Workers Utilization Plan.
- Recruitment of Workers Domestically and Overseas Regulation (Minister of Manpower), No. PER-02/MEN/1994 of 1994.
- Presidential Decree concerning the Employment of Expatriates, No. 75 of 1995.
- Protection of Indonesian Manpower Abroad through Insurance Decree (Minister of Manpower), No. KEP-92/MEN/1998 of 1998.

Israel

- Employment Service Act, 1959.
- Entry into Israel Act, 1959.
- Foreign Workers (Unlawful Employment) Act, 1991.

Italy

- Loi n° 39/90 portant (transformation en loi du décret-loi n° 416 du 30 décembre 1989) règles urgentes sur l'asile politique, l'entrée et le séjour de ressortissants de pays non membres de la Communauté européenne et la régularisation de la situation desdits ressortissants et des apatrides présents sur le territoire de l'Etat; d'immigration en réglementant les flux migratoires et les conditions de séjour des citoyens extracommunautaires.
- Loi n° 142 du 19 février 1992, portant dispositions relatives à la mise en œuvre des obligations nées de l'appartenance de l'Italie aux Communautés européennes.
- Loi n° 943/86 portant dispositions en matière de placement et de traitement des travailleurs immigrés extracommunautaires et contre l'immigration clandestine (modifiée par la loi n° 40/98).
- Loi n° 40 du 6 mars 1998 réglementant l'immigration et le statut des étrangers.

Jamaica

- Recruiting of Workers Act (Laws of Jamaica, Vol. XV, up to date 1990).
- Foreign National and Commonwealth Citizens (Employment) Act, 1964 (Laws of Jamaica, Vol. VI, up to date 1990).
- Caribbean Community (Free Movement) of Skilled Persons Act, 1997.
- Overseas Employment Programme.

Japan

- Labour Standards Act, No. 49 of 7 April 1947, as amended by Act No. 107 of 9 June 1995.
- Employment Security Act, No. 141 of 30 November 1947, as amended by Act No. 89 of 12 November 1993.
- Immigration Control and Refugee Recognition Act (Cabinet Order), No. 319 of 1951, as last amended by Law 94 of 1991.

- Ordinance of the Ministry of Justice, No. 54 of 1981, respecting enforcement of the Immigration Control and Refugee Recognition Act (as amended through Ordinance No. 20 of 1993), last amended in 1996 and 1997.

Jordan

- Labour Code Promulgation Act, No. 8 of 1996.
- Work Permit Fees for Non-Jordanian Workers Regulations, No. 36 of 1997.

Kenya

- Employment Act (Chapter 226), No. 2 of 1976 (consolidated to 1984).
- Aliens Restriction Act, No. 5 of 1973.
- Immigration Act (Chapter 172), No. 25 of 1967, as amended by Act. No. 6 of 1972.
- Immigration Regulations, No. 235 of 1967.

Republic of Korea

- Labour Standards Act, No. 286 of 10 May 1953, as amended, inter alia, by Act No. 3349 of 31 December 1980.
- Immigration Control Act.
- Emigration Act, 1962.
- Exit and Entry Control Act, 1963, as amended in 1992.
- Guidelines on the Protection and Management of Foreign Industrial Trainees (Ministry of Labour), 14 February 1995.

Kuwait

- Labour Code Act, No. 38 of 1964.
- Private Sector Labour Code (Act No. 28 of 1964), as amended by Act No. 30 of 1995.
- Ministerial Resolution Regarding the Regulation of Employment in the Private Sector, No. 106 of 1994.
- Order of the Ministry of Social Affairs and Labour, No. 111 of 1995.

Kyrgyzstan

- Labour Code, 4 October 1997.
- Employment Act, 1991.
- Presidential Decree Regarding the State Policy of the Republic of Kyrgyzstan on Cross-Border Migrant Workers, 5 January 1993.
- Governmental Order Regarding Migration, No. 345 of 30 July 1993.

Lebanon

- Loi du 23 septembre 1946 portant Code du travail (dans sa teneur modifiée au 31 décembre 1993).
- Loi du 10 juillet 1962 réglementant l'entrée et le séjour des étrangers au Liban ainsi que leur sortie [Version 1994].
- Décret n° 10188 du 28 juillet 1962 relatif à la mise en œuvre de la loi du 10 juillet 1962 réglementant l'entrée et le séjour des étrangers au Liban ainsi que leur sortie du pays [Codification de 1994].
- Décret n° 17561 du 18 septembre 1964 réglementant le travail des étrangers [Codification de 1994].

Lithuania

- Employment Contracts Act, No. I-2048 of 1991, last amended in 1997.
- Immigration Act, 1991.
- Emigration Act, No. I-1946 of 1991.
- Legal Status of Foreigners Act, No. I-1750 of 1991.
- Provisional Order on Temporary Employment of Foreigners in the Republic of Lithuania, approved by Regulation No. 237 of 13 February 1995.
- Legal Situation of Foreigners in Lithuania Act, as amended by Act No. I-1584 of 9 October 1996.

Luxembourg

- Loi du 24 mai 1989 sur le contrat de travail (modifiée en 1995).
- Texte coordonné du 1er février 1996 de la loi du 28 mars 1972 concernant: *1)* l'entrée et le séjour des étrangers; *2)* le contrôle médical des étrangers; *3)* l'emploi de la main-d'œuvre étrangère.
- Règlement grand-ducal du 22 juin 1998 portant modification: *1)* du règlement grand-ducal modifié du 28 mars 1972 relatif aux conditions d'entrée et de séjour de certaines catégories d'étrangers faisant l'objet de conventions internationales; *2)* du règlement grand-ducal du 17 octobre 1995 sur le contrôle médical des étrangers.
- Loi du 27 juillet 1993 concernant l'intégration des étrangers au Grand-Duché de Luxembourg ainsi que l'action sociale en faveur des étrangers.

Malawi

- Employment Act (Chapter 55:02).
- Labour Relations Act, No. 16 of 1996.
- Africa Emigration and Immigration Workers' Act (Chapter 56:02).
- Immigration Act (Chapter 15.03), as amended by the Immigration (Amendment) Act, No. 21 of 1987.

Malaysia

- Employment Act, No. 265 of 1955, as amended in 1981.
- Employment (Restriction) Act, No. 353 of 1968, as amended in 1988.

Sabah

- Labour Ordinance (Sabah) (Chapter 67), No. 18 of 1949, as amended in 1955 and 1959.
- Labour Ordinance (Sabah), 1987. Notification under the Malaysian Migration Fund Board Rules 1966, No. S3.

Mali

- Loi nº 92-020 du 23 septembre 1992 portant Code du travail en République du Mali.
- Arrêté nº 1566/MEFPT-SG du 7 octobre 1996 portant modalités d'application de certaines dispositions du Code du travail.

Mauritius

- Labour Act, 1975.
- Recruitment of Workers Act, No. 39 of 1993.
- Recruitment of Workers Regulations, 1994.
- Non-Citizens (Employment Restrictions) Act, 1970.

Mexico

- Ley federal del trabajo [Texto vigente al 1.º de octubre de 1995]
- Ley general de población.
- Ley federal contra la delincuencia organizada, 1996.

Morocco

- Dahir du 2 juillet 1947 portant réglementation du travail (tel que modifié en dernier lieu par le décret royal portant loi du 3 juin 1966).
- Dahir du 15/11/1934 réglementant l'immigration au Maroc.
- Dahir du 16/5/41 relatif aux autorisations de séjour.

Mozambique

- Ley núm. 8 por la que se aprueba la ley del trabajo, 1985.
- Decreto núm. 44/309, de 27 de abril de 1962, por el cual se promulga el Código de Trabajo Rural.
- Decreto ley núm. 1/76, de 6 de enero, por el cual se regula el régimen de empleo de los extranjeros.

- Decreto núm. 44/89, por el que se crea el Instituto Nacional de apoyo a los emigrantes mozambiqueños, designado abreviadamente como INAME, y se aprueba el estatuto orgánico respectivo.

Nepal

- Labour Act, 1992, as amended in 1998.
- Foreign Employment Act, 1985, as amended in 1998.
- Immigration Act, 1992.
- Immigration Rules, 1994.

Netherlands

- Labour Act, 1919 (consolidated in 1977).
- Employment of Foreign Workers Act, 9 November 1978, as amended to 28 June 1990.
- Decree to Bring into Effect a New Regulation under the Provision of Employment Act, 23 August 1995.
- Decree to amend the Royal Decree of 23 August 1995 on the Execution of the Foreign Labourers' Act, No. 406 of 14 November 1997.
- Promotion of Proportional Labour Participation of Migrant Workers Act, 11 May 1994.

New Zealand

- Employment Contracts Act, No. 22 of 1991.
- Immigration Act, 1987, last amended by the Immigration (Migrant Levy) Amendment Act, No. 23 of 1998.
- Inmigration Regulations, 1987.

Nicaragua

- Ley núm. 185 por la que se dicta el Código del Trabajo.
- Ley núm. 153 de migración.
- Ley núm. 154 de extranjería, 1993.
- Ley de incentivos migratorios, 19 de febrero de 1997.

Nigeria

- Labour Act (Chapter 198), No. 21 of 1974, as amended to 31 December 1989.
- Ordinance to Impose Restrictions on Immigrants, 1939.
- Immigration Ordinance, No. 30 of 1945, as amended in 1946.
- Immigration Regulations, No. 36 of 1946.

Norway

- Workers' Protection and the Working Environment Act, No. 4 of 1977, as amended by Act No. 24 of 1998.
- Entry of Foreign Nationals into the Kingdom of Norway and their Presence in the Realm Act, 24 June 1988.
- Aliens Act, 26 January 1973, as amended in 1988 and 1992.

Oman

- Omani Labour Code (Sultani Decree), No. 34/72, as amended.

Pakistan

- Foreigners Act, 1946.
- Foreigners Order, 1951.
- Registration of Foreigners Rules, 1966.
- Registration of Foreigners (Exemption) Order, 1966.
- Emigration Ordinance, No. 17 of 1979.
- Emigration Rules, 1979.

Panama

- Código de Trabajo de 1972 (texto actualizado hasta agosto de 1995).
- Decreto ejecutivo núm. 17, de 18 de abril de 1994, el cual reglamenta las funciones del Departamento de Migraciones Laborales del Ministerio del Trabajo.

Papua New Guinea

- Employment Act, 1978.
- Employment of Non-Citizens Act, as amended to 1983.
- Non-Citizens Regulations.

Paraguay

- Ley núm. 213 que establece el Código del Trabajo, 1993, modificado por ley núm. 496 de 1995.
- Ley núm. 978 de Migraciones, de 3 de octubre de 1996.
- Decreto núm. 18295, de 28 de agosto de 1997, por el cual se reglamenta la ley de migraciones.

Peru

- Decreto legislativo núm. 728, por el que dictan ley de fomento del empleo, de 1991, modificada por la ley núm. 26513, de 1995.

- Decreto legislativo núm. 689, de 4 de noviembre de 1991, por el que se establecen normas para la contratación de trabajadores extranjeros, modificado por la ley núm. 26196, de 9 de junio de 1993.
- Decreto Supremo núm. 014-92-TR, reglamento de la ley de contratación de trabajadores extranjeros.

Philippines

- Labor Code (Presidential Decree), No. 442 of 1974, as amended, inter alia, in 1981, 1986 and 1989.
- Migrant Workers and Overseas Filipinos Act, No. 8042 of 1995.
- Alien Social Integration Act, No. 7919 of 1995.

Poland

- Proclamation of the Minister of Labour and Social Policy on the Publication of a Consolidated Text of the Labour Code, 23 December 1997.
- Foreigners Act, No. 739 of 25 June 1997.

Portugal

- Decreto ley núm. 60/93, por el que se establece el régimen jurídico de entrada, permanencia y salida del territorio portugués de nacionales de Estados miembros de la Comunidad Europea.
- Decreto ley núm. 39/98, de 25 de febrero, por el cual se crea el Consejo Consultivo para los Asuntos Migratorios.
- Decreto ley núm. 244/98, de 8 de agosto, por el que se reglamenta la entrada, permanencia, salida y la expulsión del territorio nacional.
- Ley núm. 65/98, de 2 de septiembre, por la que se modifica el Código Penal (engaño a trabajadores migrantes).

Qatar

- Labour Code Act, No. 3 of 1962, as amended by Act. No. 12 of 1989.
- Regulation of the Entry and Residence of Foreigners in Qatar Act, No. 3 of 1963.
- Regulation of the Operation of Labour-Importing Agencies Act, No. 14 of 1992.

Romania

- Loi n° 10 du 23 novembre 1972 portant Code du travail (mise à jour au 1^er^ mai 1994).
- Loi n° 25/1969 sur la résidence des citoyens étrangers.
- Décret-loi n° 10/1990 sur la résidence des citoyens étrangers.
- Arrêté du gouvernement n° 207/1997 (livret de travail pour les étrangers).

Saint Lucia

- Labour (Amendment) Regulations, No. 23 of 1971.
- Foreign Nationals and Commonwealth Citizens (Employment) Act, No. 3 of 1971.
- Foreign Nationals and Commonwealth Citizens (Employment) Regulations, No. 9 of 1971.

San Marino

- Loi n° 7 du 17 février 1961 relative à la protection du travail et des travailleurs.

Saudi Arabia

- Labour Code (Royal Decree), No. M/21 of 6 September 1989.

Singapore

- Immigration (Amendment) Act, No. 41 of 1995.
- Immigration (Amendment No. 4) Regulations, No. S 167 of 1996.
- Central Provident Fund to Employers of Foreign Employees Act.
- Central Provident Fund (Approved Employees Scheme) (Amendment) Regulations, No. S 571 of 1995.
- Central Provident Fund (Permanent Residents and Employees) Regulations, No. S 321of 1995.

Slovakia

- Labour Code Provision Act, No. 451 of 1992 (consolidated text of 1992).
- Collection of Acts on Employment Act, No. 387 of 1996.

Slovenia

- Basic Rights in Labour Relations Act, 1989 and 1990.
- Labour Relations Act, 1990, 1991 and 1993.
- Protection of Citizens Temporarily Working Abroad Act, 1980.
- Foreigners Act, 1991.
- Employment of Foreigners Act, 1992.
- Instruction on the Application of the Act on Employment of Foreigners, 3 September 1997.

South Africa

- Basic Conditions of Employment Act, No. 75 of 1997.
- Aliens Control Act, No. 96 of 1991, amended in 1993 and 1995.
- Aliens Control Regulations, No. R999, 1996.

Spain

- Real Decreto Legislativo núm. 1/1995, de 24 de marzo, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores.
- Ley Orgánica núm. 7 sobre derechos y libertades de los extranjeros en España, 1985.
- Real Decreto núm. 155/1996, de 2 de febrero, por el que se aprueba el Reglamento de ejecución de la Ley Orgánica núm. 7/1985.
- Real Decreto núm. 1099 sobre entrada, permanencia y trabajo en España de ciudadanos de Estados miembros de las Comunidades Europeas, 1986.

Sri Lanka

- Immigrants and Emigrants Act, 1980.
- Estate Labour (Indian) Ordinance, 1980.
- Indian Immigrant Labour Ordinance, 1980.
- Sri Lanka Bureau of Foreign Employment Act, No. 21 of 1985, as amended in 1994.
- Sri Lanka Bureau of Foreign Employment Regulations, 1985.

Suriname

- Employment Services Act, No. 10 of 22 August 1964.
- Decree Workpermit Foreigners, No. 162 of 1981.

Sweden

- Protection of Employment Act, 1974, as amended in 1990.
- Aliens Act, No. 529 of 1989, as amended by Act No. 773 of 1995 and Act No.1224 of 1997.
- Aliens' Ordinance, No. 547 of 1989, last amended by Act No. 677 of 1997.

Switzerland

- Loi fédérale du 26 mars 1931 sur le séjour et l'établissement des étrangers, [Codification de 1993].
- Règlement de la loi fédérale sur le séjour et l'établissement des étrangers, 1949 [Codification de 1993].
- Ordonnance du Conseil fédéral du 6 octobre 1986 limitant le nombre des étrangers [Codification de 1991].
- Loi sur le service de l'emploi et la location de services du 6 octobre 1986.

Syrian Arab Republic

- Code du travail, loi no 91 de 1959 (et ses amendements).
- Décret législatif no 84, 1969, relatif à l'organisation syndicale des travailleurs en Syrie, dernière modification 1997.

Tajikistan

- Labour Code, No. 417 of 15 May 1997.
- Decree concerning Primary Measures for Addressing Issues relating to the Emigration of Tajik Citizens, No. 15 of 24 January 1994.
- Legal Status of Foreign Citizens in the Republic of Tajikistan Act, 1 February 1996.
- Government Decree concerning Measures Regulating Labour Emigration, No. 35 of 15 January 1997.

United Republic of Tanzania

- Immigration Act, No. 7 of 1995.

Zanzibar

- Labour Act (Zanzibar), No. 3 of 1997.

Thailand

- Labour Protection Act, No. 2541 of 1998.
- Alien Work Permit Act, No. 2521 of 1978.
- Royal Decree Stipulating the Occupations and Professions Prohibited to Aliens, No. 2522 of 1979.
- Employment Agencies and Employment Seekers' Protection Act, No. 2 of 1994.

The former Yugoslav Republic of Macedonia

- Employment Act, 1987, as amended on 22 December 1993.
- Act to amend the Act on Conditions of Establishment of Labour Relations with Foreign Citizens, 1993.

Togo

- Ordonnance n° 16 du 8 mai 1974 portant Code du travail.

Trinidad and Tobago

- Employment Exchange Ordinance (Chapter 22), No. 2.
- Recruiting of Workers Ordinance (Chapter 22), No. 7.
- Employment Exchange Regulations.
- Immigration Act, No. 41 of 30 December 1969.
- Immigration (Amendment) Act, 16 April 1974.

Tunisia

- Code du travail, approuvé par la loi n° 66-27 du 30 avril 1966 (dans sa teneur révisée au 21 février 1994).

- Loi n° 96-62 du 15 juillet 1996 portant modification de certaines dispositions du Code du travail (articles 258, 259, 261-263, 267 et 269 relatifs aux travailleurs étrangers).
- Loi n° 68-7 du 8 mars 1968 relative à la condition des étrangers en Tunisie.
- Décret d'application n° 68-198 du 22/6/68 réglementant l'entrée et le séjour des étrangers en Tunisie.
- Loi n° 83-111 du 9 décembre 1983 instituant l'Agence de promotion de la formation professionnelle et l'Agence pour la promotion de l'emploi et les travailleurs tunisiens à l'étranger.
- Décret n° 88-53 du 9 janvier 1988 relatif au recrutement de la main-d'œuvre étrangère par les entreprises industrielles totalement exportatrices.

Turkey

- Loi n° 1475 du 25 août 1971, Code du travail, modifié en 1975, 1979, 1980, 1981, 1982, 1983.
- Loi n° 5683 sur la résidence et séjour des étrangers.
- Loi n° 2007 comprenant des restrictions pour l'emploi des étrangers, modifiée par les lois n^os^ 2634, 6224, 6235 et 6326.

Uganda[1]

United Arab Emirates

- Regulation of Employment Relationships Act, No. 8 of 1980, as amended.
- Migration and Residence Act, No. 6 of 1973, as amended by Entry and Residence of Foreigners Act, No. 13 of 1996.

United Kingdom

- Contracts of Employment Act (Chapter 53), 1972.
- Employment Rights Act (Chapter 18), 1996.
- Immigration Act (Chapter 77), 1971.
- Immigration Act 1988 (Commencement No. 3) Order 1994, No. 1923 (C.35) of 1994.
- Immigration (European Economic Area) Order, No. 1895 of 1994.
- Asylum and Immigration Act, 1996.

[1] The Committee does not have available to it any legislative information dating since 1980, the date of the first report of the Government on the application of Convention No. 143. The Committee notes that, following the adoption of a new Constitution in 1995, the Government has undertaken to revise its labour legislation with the technical assistance of the Office. For more details, see the direct request addressed to the Government in 1995bis.

Anguilla

- Immigration and Passport Ordinance, No. 14 of 1980.

Bermuda

- Bermuda Constitution Order, 1968.
- Bermuda Immigration and Protection Act (Part V), 1956.

British Virgin Islands

- Labour Code Ordinance, 1975.

Solomon Islands

- British Solomon Islands Order, 1974.

Dominica

- Commonwealth of Dominica Constitution Order, No. 1027 of 1978.

Falkland Islands (Malvinas)

- Immigration Ordinance, 1987.
- Illegal Immigrants Order, No. 26 of 1992.
- Permanent Residence Permits (Application) Regulations, No. 6 of 1996.

Gibraltar

- Employment and Training Ordinance.
- Employment (Amendment) Ordinance 1989, No. 23.
- Employment (Workers Contractual Terms) (Information) Regulations, No. 166 of 1991.
- Employment Regulations, 1994.
- Immigration Control Ordinance.

Guernsey

- Industrial Disputes and Conditions of Employment (Guernsey) Act.

Isle of Man

- Immigration Act, 1971, as extended to the Isle of Man by the Immigration (Isle of Man) Order, No. 2630 of 1991 and the Immigration (Isle of Man) Order 1997, No. 275 of 1997.

Jersey

- Immigration (Work Permits) (Jersey) Rules.

Montserrat

- Montserrat Constitution Order, No. 2401 of 1989.

Saint Helena

- Immigration Control Ordinance, No. 3 of 1998.

United States

- Immigration and Nationality Act, 1952 (INA), 8 U.S.C. §1101 et seq.
- Immigration Reform and Control Act, 1986 (IRCA). Public Law 99-603 (S. 1200), 8 U.S.C.
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996.
- Migrants and Seasonal Agricultural Workers Protection Act (MSPA), 29 U.S.C. §1801 et seq.
- 8 Code of Federal Regulations: Aliens and Nationality: Control of Employment of Aliens, 1992.

Uruguay

- Decreto de 28 de febrero de 1947 sobre el ingreso de extranjeros al país.
- Ley núm. 16736, de 5 de enero de 1996, en lo que respecta a sanciones en caso de infracciones a normas laborales.
- Decreto de 13 de agosto de 1997 de creación de la Comisión Nacional de Asuntos Migratorios.

Venezuela

- Ley Orgánica del Trabajo, de 27 de noviembre de 1990.
- Ley de reforma parcial de la Ley Orgánica del Trabajo, de 19 de junio de 1997.
- Decreto núm. 1281, de 2 de abril de 1996, por el cual se crea la Comisión Nacional de Migración.

Viet Nam

- Labour Code of the Socialist Republic of Viet Nam, 1994.
- Decree on Sending Vietnamese Nationals to Work Overseas, No. 07/CP of 20 January 1995.
- Official Letter on Implementation of a Number of Provisions of Labour Laws, No. 658-LDTBXH-CV of 1996.
- Decree on Issuance of Work Permits for Foreigners Working in Enterprises and Organizations in Viet Nam, No. 58-CP of 1996.
- Circular Providing Guidance for the Granting of Work Permits to Foreigners Working at Enterprises and Organizations in Viet Nam, No. 09-LDTBXH/TT.

Yemen

- Labour Code Act, No. 5 of 1995, as amended by Act No. 25 of 1997.
- Entry and Residence of Foreigners Act, No. 47 of 1991.

Yugoslavia[*]

Zambia

- Employment Act (Chapter 512), No. 57 of 1965.
- Immigration and Deportation Act (Chapter 122), No. 343 of 1965, No. 29 of 1965.
- Immigration and Deportation Regulations, 1965.
- Aliens (Registration and Status) Act (Chapter AI 25 of the Applied Laws), 1965 edition.

Zimbabwe

- Labour Relations Act, 1984.
- Labour Relations (General) Regulations, No. 368 of 1985.
- Immigration Act, 1979.
- Immigration Regulations.
- Immigration (Amendments) Regulations, No. 12 (No. 96C) of 1993 and No. 13 (No. 348) of 1993.

---

[*] The Federal Republic of Yugoslavia (i.e. the territory of Serbia and Montenegro) is still not recognized as continuing automatically the membership of the former Socialist Federal Republic of Yugoslavia (SFRY) in the ILO as at 11 December 1998.

Price: 35 Swiss francs ISBN 92-2-110808-2